

1 item that they had in common was there's no exterior  
2 work. So then there would be -- 3/19 would be a day  
3 where there was no interior work.

4 Q. Okay. Look at March 16. I had a  
5 questions for you about what something means there.  
6 I'm going to let you take a look at it.

7 A. Yep.

8 Q. All right. So at the end of it, it  
9 says -- you are talking with the owner, and it says.

10 He has to make a payment to the leasing  
11 agent for both parties. This came to him as a  
12 surprise. He is working on other paths to funding.

13 That first sentence, he has to make a  
14 payment to leasing agent. Who is the leasing agent?

15 A. I don't know in specifics. It's -- I  
16 wouldn't know in specific. This specific  
17 conversation was about the new lease for GSA.

18 Q. And so who are both parties? Who is he  
19 referring to there, or who are you referring to?

20 A. That would be GSA and the leasing agent  
21 for Joey.

22 Q. So it came to him as a surprise that he  
23 has to pay both of the agents?

24 A. That's what my notes say.

25 Q. Okay. Did Mr. Odom ever talk to you

1 about any financial troubles, or concerns, that he  
2 was having with any of his other companies?

3 A. No. We didn't talk about his other  
4 companies.

5 Q. Okay.

6 A. I don't know what all other companies  
7 that he would have, other than Four-O.

8 Q. Look at the entry for April 26. About  
9 the third sentence or so, it says.

10 The painters are a week late, and I have  
11 asked them to be finished by Tuesday, April 27,  
12 2021, with all touchup on the first floor.  
13 Electrician is a no-show.

14 So you were expecting the painters to  
15 come within that week, but they were a week late to  
16 come in and do touchups? Is that what this entry is  
17 referring to?

18 A. Is that 4/26?

19 Q. Yes.

20 A. Yes.

21 Q. So I think rather than read through all  
22 of these other entries, it would be -- you've  
23 already said your entries are accurate. So, for  
24 example, on May 20 where you say no work due to  
25 flooding and rain, that's an accurate statement,

1 that you had no work on that day with the reason,  
2 correct?

3 A. Yeah. Again, are just general  
4 statements.

5 Q. Okay. Let me ask you some questions  
6 about -- move on to some of the e-mails.

7 A. Would this be in book two?

8 Q. These are actually -- I pulled these from  
9 the plaintiff's production. So let me share this  
10 screen with you. On some of these, I don't think  
11 they're -- well, I didn't find them in your e-mails.  
12 It doesn't mean they weren't there. But I pulled  
13 this from the plaintiffs. Can you see this e-mail?

14 A. Yes.

15 Q. All right. So this is Eaux-Odom-FourO  
16 265.111 from Aden Monheiser to -- to you and Joey  
17 Odom is cc'd on it along with Jeff Major. And  
18 reference is 995 engineering scope. And again, 995  
19 refers to Encore's job number, correct?

20 A. Correct.

21 Q. And date is October 14, 2020. And Aden  
22 says.

23 Do you think this engineering report will  
24 help our cause to get the insurance company to pay  
25 for siding replacement? Jeff, in your opinion, is

1 this cost something that potentially could be  
2 covered by insurance?

3 Why are -- why is Encore sending this  
4 information to the owner and Skyline dealing with  
5 insurance coverage issues?

6 A. We're asking an opinion it looks like.

7 Q. Okay. What is Encore -- Encore is the  
8 one that engaged BE-CI, that's the engineering  
9 report that's being referred to, correct?

10 A. Yes.

11 Q. And the purpose of engaging them was to  
12 put the building back -- the exterior wall  
13 replacement and windows, to put it back in its  
14 pre-hurricane condition, correct?

15 A. Yes.

16 Q. And then did Skyline, or the owner, ask  
17 you to provide them with information to help them in  
18 their cause with the insurance company?

19 A. I don't -- I'm not sure. But I can speak  
20 to -- sometimes when these items in these deals, the  
21 insurance company may send out an engineer. And so  
22 we've got an engineer, maybe we were wanting to ask  
23 if they've got a forensic engineer that could assist  
24 in that, that could be a part of that conversation.  
25 Since we have got one engineer on there like, you

1 know, why not stick with that? But, you know, I'm  
2 not 100 percent positive in the context that you  
3 were putting it in.

4 Q. Well I was just referring to an e-mail.  
5 Is there any other context that I should be looking  
6 at?

7 A. Again, you just read an e-mail that could  
8 be a string of ten e-mails, so I don't know.

9 Q. Let me look at -- so this e-mail -- can  
10 you see Encore 12.0004 on your screen?

11 A. Yep.

12 Q. All right. This one is dated  
13 November 24, 2020. And that is that notice to  
14 proceed date that is in Encore's contract, correct?

15 A. Yes.

16 Q. Who is J.C. Tyson?

17 A. Somebody with Priority Floors. He may be  
18 their -- it says right there he's their lead  
19 estimator.

20 Q. Okay. And it's to you and Patrick  
21 Rooney. Patrick Rooney is also with Priority  
22 Floors, correct?

23 A. Yep.

24 Q. I'm sorry. Did you answer?

25 A. Oh, yes.

1 Q. Okay. So Priority Flooring rep says.

2 Good evening, Evan. Please find attached  
3 our submittals for this project. Please confirm  
4 that these initiatives are correct so that we can  
5 get the materials on order. We will also need a  
6 color for the rubber fitness flooring. I believe  
7 all the other finishes have colors specified.

8 So as of the date that you got notice to  
9 proceed, the flooring subcontractor is engaged and  
10 ready to go, correct?

11 A. Yes.

12 Q. All right. This one I don't think you  
13 can see it. All right. Can you see Eaux-Odom-FourO  
14 265.021 on the screen?

15 A. Yep.

16 Q. All right. This is from you to Joey  
17 Odom, October 22, 2020.

18 Joey, to answer your question about  
19 permits, typically we will not pull permits until we  
20 have collected all submittals, subcontractors, and  
21 engineering details.

22 And then you explain what the submittal  
23 is, that's collecting all the interior designs for  
24 the electric, mechanical, and insulations  
25 subcontractors.

1           Subs will be attached to our permits. We  
2 have to get subs under contract so they can attach  
3 to our permits.

4           And then you need engineering details.

5           Once we collect engineering details. We  
6 will submit those with our permit application. This  
7 ensures that we only have to go to the permitting  
8 office once to get permits.

9           I read all of that correctly?

10          A.     Yes.

11          Q.     Then you say.

12                 I plan on pulling permits at the  
13 beginning of November once we have our exterior  
14 details and some information on the requirements. I  
15 will be calling the building inspector out here to  
16 meet with them in upcoming week. This helps me get  
17 a feel for what their expectations are, and what  
18 their interpretation of certain codes are.

19          A.     Yes.

20          Q.     So as of October 22, you -- Encore was  
21 intending to get a permit for this project, correct?

22          A.     Yeah. Usually you get a feel for -- in  
23 these circumstances, the permitting office may put  
24 holds on pulling permits for smaller items, or if  
25 you have third-party details, they may -- you know,

1 they may not require that.

2 Q. All right. So did you call the building  
3 inspector out to the project to meet with them?

4 A. We called the permitting office.

5 Q. You did call the permitting office?

6 A. Yes.

7 Q. And was that you that made the call?

8 A. Me and actually it was one of the  
9 subcontractors who knew them.

10 Q. Okay. And what department did you call,  
11 permitting department?

12 A. I don't remember exactly.

13 Q. Who did you talk to?

14 A. I don't remember exactly.

15 Q. All right. And what was the purpose of  
16 the call?

17 A. Just to see if the permits were needed to  
18 be pulled for the work that was required. Because  
19 there was a statement that they did release about  
20 pulling permits on items that had to do with  
21 entrances, exits, structural damages, and those  
22 kinds of situations, and those kind of items. And  
23 so that's why.

24 Q. What was the answer from the permitting  
25 department as to whether or not a permit was going



1 to be required for this project?

2 A. Again, it was to interpret their -- the  
3 first -- or the note that they did put out about  
4 that, about whether we should be pulling permits or  
5 not. And so they said -- I believe the  
6 representative said that we did not need to do that  
7 because of the fact that we weren't making any  
8 changes to the building.

9 Q. Okay. So did you make any submission to  
10 the permit department?

11 A. No.

12 Q. Do you have anything in writing from the  
13 permit department exempting, or saying, that this  
14 project fell outside the scope of requiring a  
15 permit?

16 A. No.

17 Q. All right. This next document is  
18 Eaux-Odom-FourO 10.083 through 10.085. And it is  
19 dated February 1, 2021, from Joey Odom to you. Do  
20 you know why the subject is home contractor?

21 A. No idea.

22 Q. So Mr. Odom says.

23 On the cleaning of the exterior frames,  
24 just a wipe will do for now -- I think that's for  
25 now. Due when the clean the windows -- I think he's

1 saying do when they clean the windows. Yes, let's  
2 chat.

3 So if we follow this down, you say on  
4 January 31.

5 I'll come up with something and options.  
6 I don't know the process of tint for the top floor,  
7 or the cleaning frames, but I'll get some prices and  
8 options.

9 What component of the building is being  
10 discussed? We can keep reading, if it's not clear.

11 A. Yeah, I'm not 100 percent sure.

12 Q. Okay. The next e-mail is also on  
13 January 31 from to you to Mr. Odom.

14 We'll talk tomorrow about it. I'm just  
15 saying that I'm already spending 35,000 on the  
16 windows that's in the budget. If you were to do  
17 tint and framing cleaning, you'll be looking at a  
18 minimum of 35,000 additional. I don't feel  
19 comfortable with 35,000 in cosmetic upgrades on an  
20 older system you could use that elsewhere. I mean,  
21 70,000 on 40-year-old windows just doesn't feel  
22 right to me. This is just my professional opinion.

23 So now do you know what component of the  
24 building y'all are discussing in --

25 A. Windows, yeah.

1 Q. What is it?

2 A. It's the windows.

3 Q. Okay. And that's the windows that you  
4 have already given testimony on. And they're slated  
5 now to be replaced with a new system, correct?

6 A. On that -- yes, right now they are.

7 Q. Okay. And remember I asked you whether  
8 or not you had ever referred to replacement as a  
9 cosmetic upgrade, is that what you're referring to  
10 right here when you say --

11 A. -- don't feel comfortable with 35,000 in  
12 cosmetic upgrades on an older system. It's just  
13 stating that, you know, why would we upgrade, or why  
14 would we clean the frame for 35,000? Essentially  
15 spending \$75,000 for a temporary to make it look  
16 decent whenever, you know, you should be doing new  
17 windows.

18 Q. Okay. So this is referring -- the  
19 cosmetic upgrades is referring to tint and clean  
20 frames; is that right? The existing --

21 A. Yes, I think so. Again, the 35 --  
22 there's a -- I don't feel comfortable with \$35,000  
23 in cosmetic upgrades. Again, it's just -- we are  
24 going towards new windows. I don't -- why would we  
25 spend \$35,000 on this. Why would we -- why would we

1 do that for essentially whenever we are going to  
2 replace the windows.

3 Q. Okay. And let's go down to the next one.  
4 Of course, I'm reading them backwards.

5 A. Yeah.

6 Q. We're going back in time as we read them.  
7 So the next one, Mr. Odom says to you.

8 Will insurance cover?

9 And so my question for you is. Why is he  
10 asking you that question, for you to determine  
11 whether or not insurance covers a particular scope  
12 of work that's being proposed? Was that part of  
13 your job?

14 A. I mean, it's -- it's -- I have general  
15 knowledge. I deal with these things quite often.  
16 So, again, like, you know, it's not -- it's -- the  
17 cleaning of all these items, I mean, no, they would  
18 not be in an insurance scope.

19 Q. Okay. But my question was. Mr. Odom  
20 asking you whether or not a particular scope is  
21 covered by insurance. Was that Encore's job, or was  
22 that within your scope --

23 A. No.

24 Q. -- to advise the owner on insurance  
25 coverage?

1 A. No.

2 Q. Okay. And I'm just trying to get clear.  
3 Was that -- do you know if that was Skyline's role,  
4 or do you know?

5 A. I don't -- I don't know. I don't know  
6 what their exact role is.

7 Q. All right. Now going back to January 31.  
8 And this is even earlier in time. This one is at  
9 5:23 p.m. You say.

10 We also need to discuss the window  
11 frames. I did the experiment and it worked decently  
12 well, probably an improvement of 40 percent.  
13 However it was a pain, and took some time to do it.  
14 I'll show you where I did it tomorrow. The labor  
15 will be expensive because it's time-consuming. I  
16 have no idea how long it will last. I really don't  
17 know how much you are wanting to spend on these  
18 windows. What I mean is, you could spend 30,000 in  
19 window tint for the top floor, and another 15,000 in  
20 refinishing the exterior frames with -- I think  
21 that's supposed to be -- which --

22 A. Which.

23 Q. -- is roughly 30 percent of the cost to  
24 get new windows with no guarantee on how long it'll  
25 last. We can talk tomorrow about it.

1 All right. So with all of this context,  
2 what are you telling -- what is your option, your  
3 opinion? What are you telling Mr. Odom about  
4 windows?

5 A. Okay. So this is a -- this is good. So  
6 at this point in January, again, we were already  
7 steering towards trying to make the window system as  
8 good as we could make it. You know, we already took  
9 out a whole bunch of items. We've already spent  
10 money to it. We've already put up panels. We have  
11 designed the paneling system to go around the  
12 windows.

13 He was just -- with new siding that was  
14 on the building, it's like, you know, then you have  
15 these -- these windows. So he was trying to see,  
16 you know, what could we do to make these windows  
17 look a little bit better. Like, there's not a lot  
18 that we can do. I was giving him options.

19 I did run an experiment on a piece of a  
20 window frame. I think it was like an as-seen-on-TV  
21 type situation. I did it, and it actually worked  
22 out pretty well on some of the -- on some of the  
23 frames with cleaning them. And so that's all that  
24 discussion is, is that it's not worth, you know, the  
25 money to do this whenever you could put that

1 towards -- you're going to be putting that towards  
2 getting a new window system whenever he decides that  
3 he was going to get a new window system.

4 Or at that point, I think we were already  
5 leaning towards it, because I was forming those  
6 panels and putting those panels on the building  
7 based upon the entire replacing the windows.

8 Q. Okay. Now the next one you should see on  
9 your screen is Eaux-Odom-FourO 46. Do you see that  
10 e-mail?

11 A. Yes.

12 Q. Okay. So this one is from you to Jade  
13 Bentz with Skyline and Jeff Major with Skyline.  
14 It's dated December 13, 2020. And the subject is  
15 620 Esplanade roof deck insulation invoice. And you  
16 attach there the Martin Insulation roof spray foam  
17 invoice.

18 Good morning. Please see attached  
19 invoice for the roof spray foam invoice for 620  
20 Esplanade Street. This property is located in  
21 zone 2, which requires roofs to be insulated at a  
22 value between R-30 and R-60. Please note the  
23 building has plenum return HVAC system, therefore  
24 all loose insulation could not be used. The R-value  
25 of the roof system is R-12.8. The spray foam was

1 applied to the underside of the deck to achieve an  
2 R-18 to R-21 value for total R-value between R-30  
3 and R-32.

4 So why are you sending this Martin Roof  
5 spray foam invoice to Skyline?

6 A. Because Martin Insulation sent it to Joey  
7 and I.

8 Q. Okay. But is Skyline going to pay --  
9 they are not supposed to pay the invoice, right?

10 A. No, we handed them invoices. If Joey got  
11 an invoice for something, then we would hand Skyline  
12 an invoice.

13 Q. So Skyline was a depository for all  
14 invoices related to 620 Esplanade? They were  
15 supposed to get all invoices?

16 A. I'm not -- I have no idea. I just know  
17 that they were -- they specifically asked for some  
18 invoices that Joey has received. But again, I was  
19 on a majority of those e-mails. If -- for some  
20 reason if Martin Insulation wanted to send me a --  
21 or send Joey -- his invoice to Joey, he would send  
22 it -- he would just copy me on it. Or I think even  
23 the roofer did it because I was asking for some  
24 specific items from the roof as well. So they  
25 started copying me on e-mails.



1 Q. So this is referring to an upgrade in the  
2 roof spray form insulation, right? An improvement  
3 over what was there because of a code requirement  
4 for an R-value; is that correct?

5 A. I don't know. I have no idea what it was  
6 there for.

7 Q. So who filled you in on all this  
8 information about the R-values, and what the code  
9 required, and how the spray foam insulation was  
10 going to achieve that? Who gave you that  
11 information?

12 A. It's -- it's common knowledge of doing  
13 the work. You can just -- you can look them -- you  
14 can look up most of these items, and so. But again,  
15 my -- I knew about the roofing system. And I knew  
16 that the roofing system that is there is not the  
17 same roofing system that he had on the building  
18 previously.

19 Q. Okay. Now back to the spray foam  
20 insulation. I think you have explained, or told me,  
21 that this spray foam insulation was not part of  
22 Encore's contract scope, correct?

23 A. Correct.

24 Q. And Encore did not handle this scope of  
25 work, correct?

1           A.     No, we did not pay -- he contracted with  
2     Joey individually.

3           Q.     Martin Insulation contracted with Joey  
4     Odom, the owner, separate from Encore? It wasn't --

5           A.     Yes. On this -- on these specific items.

6           Q.     Okay. And are you doing this -- because  
7     this is outside of your scope. Are you -- is this  
8     an instance where you're just being helpful, you've  
9     got the invoice --

10          A.     I'm helping the owner, yes, ma'am.

11          Q.     Okay. And that's what I've been trying  
12     to figure out. You had not -- you could have just  
13     said, hey, this is outside my scope, do it yourself.  
14     But you didn't, you passed this invoice along to  
15     Skyline?

16          A.     Yes. I was there whenever they put in  
17     the spray foam on the roof, as well. So I kind of  
18     looked after it, made sure they were doing it  
19     properly for the owner.

20          Q.     Okay. And was there some type of  
21     coordination you were having to do with your work,  
22     or is that --

23          A.     No. Because we weren't doing -- we  
24     didn't have a signed contract with him at that time.  
25     So this is in December 13. So, no.

1 Q. Well it's after the notice to proceed  
2 date, though, right? It's after November 28?

3 A. Right. Notice to proceed with small  
4 items to work -- to do work, yes. I would classify  
5 it as a larger item. It kind of goes -- you can say  
6 the same thing for the roof. Again, I wasn't  
7 contracted to do the roof. But I just -- I knew it  
8 would have impacts on the inside, so I monitored  
9 that roofing for him, as well, as much as I could  
10 help.

11 Q. Now this next e-mail that's up here is  
12 from Eaux-Odom-FourO 9.039, 9.40. And the subject  
13 is contract. The date is December 8, 2020. It's  
14 from you to Mr. Odom. And at this point, before you  
15 have signed a contract with him, but after notice to  
16 proceed date. You say.

17 I am in the process of finalizing all my  
18 contracts with the subs. Number one, Priority  
19 Floors, number two, Jacque Bourgeois Electric,  
20 number three, Graham Martin Insulation, number four,  
21 Colonial Window, number five, Associated  
22 Waterproofing, number six, King Construction, number  
23 seven Trouth Mechanical.

24 So at this point on December 8, that was  
25 your status, is that you were finalizing contracts

1 with these subs, right?

2 A. I'd been -- those contracts were -- have  
3 been finalized. I'm waiting for him to sign the  
4 contract at that point.

5 Q. So you -- did you just say that had  
6 already -- you say you're in the process of  
7 finalizing your contracts with the subs.

8 A. With their estimates --

9 Q. Okay.

10 A. -- filling out their contracts  
11 themselves. I am waiting to send this stuff for a  
12 contract, because Joey has not signed his contract.

13 Q. Okay. And then down below, you are -- it  
14 looks like similar to the terms that wound up being  
15 in the contract, you've got a payment number 1 of  
16 75,000. But I think we know that when he actually  
17 signed the contract, that amount had changed to  
18 100,000, right?

19 A. Yes.

20 Q. And a progress payment of a hundred to  
21 200,000. But when the contract got signed, that  
22 amount had changed to 250,000?

23 A. Yes.

24 Q. And then the final payment would be the  
25 rest, depending on recovering depreciation funds

1 from the insurance. And that's essentially what got  
2 put in the contract with a few other conditions on  
3 it, right?

4 A. Yes.

5 MS. WOLF: Sorry about that. I had  
6 somebody knocking at my door, so I figured  
7 it had to be important, if they dare to  
8 knock on the door with a depo sign on it.

9 BY MS. WOLF:

10 Q. All right. Let me -- wait, here's one  
11 more I've got to ask you about. All right. This  
12 one that should be upon your screen is an e-mail  
13 about the storm. The date is October 9. So, you  
14 know, obviously that's referring to Hurricane Delta,  
15 correct?

16 A. Yes.

17 Q. So this is from Joey -- you know,  
18 actually this -- I thought this was to you, but I  
19 don't think it is. I don't know who it's to.

20 A. It's to Jeff Major, Aden, and myself.

21 Q. Okay. I see. And he says, we took on  
22 some water. Earlier you just -- I asked you to  
23 describe what it was, and it was water from -- in  
24 Hurricane Delta coming through the sheetrock,  
25 paneling, et cetera, the temporary measures to try

1 to protect the building. Is that -- that's what he  
2 meant by took on water, is leaks through the window  
3 and wall systems and roof?

4 A. Yeah.

5 Q. Not any type of flooding?

6 A. No. No. There was no -- there was very  
7 little -- and took on some, like, we did -- there  
8 was -- I think I had set up 10 dehu's through that  
9 entire building, which was adequate, enough to dry  
10 it out in a of couple days.

11 Q. You cut out just a little bit. You set  
12 up what?

13 A. Dehumidifiers LGRs kind of throughout the  
14 building to dry out anything that was wet. But  
15 again, at that point it just -- he was basically  
16 down to studs and -- and concrete.

17 Q. Okay. What I was asking was when he said  
18 we took on water, he is taking about leaks through  
19 the wall the roof, he was not -- y'all -- the  
20 building did not get flood damage; is that correct?

21 A. Correct. It did not.

22 Q. It did not. Okay. All right. I have  
23 some other questions for you about -- what book do  
24 you have in front of you? The first one, book one?

25 A. Yes.

1 Q. All right. Let me see if there's  
2 anything else in here. If you would turn to Tab L2.

3 A. Okay.

4 Q. So this is your job cost detail report,  
5 is it not?

6 A. Yes.

7 Q. All right. It's Encore 14. And the date  
8 on top is June 18, 2021. So that would be -- this  
9 would be up to date as of June 18, '21?

10 A. Yes.

11 Q. And so what's listed here is all of your  
12 subcontractors on this project, correct?

13 A. Yes.

14 Q. And the amount of money that you have  
15 paid to each one of them as of this date, correct?

16 A. Correct.

17 Q. There is also -- so we see BE-CI is  
18 listed here. Because they were under contract with  
19 Encore, correct?

20 A. Yes.

21 Q. All right. And it looks like as well as  
22 supplies. So for example, if you went to Home Depot  
23 or Interlink Supply, or Sherwin-Williams, all of --  
24 every cost associated with this particular project  
25 is included on this job cost detail report, correct?

1 A. Yes.

2 Q. And what is the bank amount? U.S. Bank  
3 \$12,100.26 what is that?

4 A. That's just a credit card that -- that we  
5 use for housing, travel, things like that.

6 Q. Okay. So the breakdown of those costs  
7 for support would actually be on your credit card  
8 bill, right?

9 A. Yeah. Usually do break them out and put  
10 them into our cost report -- our individual -- what  
11 they are dedicated for.

12 Q. All right. And what is Paychex for  
13 \$46,943?

14 A. That would be our payroll.

15 Q. Did Encore self perform any of the work  
16 on this project?

17 A. Some of it we did, others we did not. I  
18 had -- I did some work out there. Again, I'm a  
19 carpenter by trade. So I like to do some work on  
20 getting out of the office a little bit. And I also  
21 brought in a couple of my trim carpenters that we  
22 personally have kind of towards the end of the job.  
23 And then this would be my administrator, and Aden's  
24 time in on this, as well.

25 Q. Okay. And then you have timesheets --



1 y'all keep timesheets that show what job is being  
2 done, and what time is allocated to this particular  
3 project?

4 A. Yes.

5 Q. All right. And then your name is on  
6 there, \$2563. What is that amount?

7 A. That is an amount that I spent on --  
8 myself on some flashing material off of Amazon, just  
9 building material.

10 Q. So you would buy it and then pay yourself  
11 back?

12 A. I don't -- no. I'd buy it and then I  
13 would submit a expense report, and then Encore would  
14 pay me.

15 Q. Do you know -- does the Encore documents  
16 that you provided to us, does it contain all of the  
17 supporting documentation for all of these expenses?  
18 Meaning the credit card bills, the Paychex, the  
19 timesheets, or it does not?

20 A. I'm not 100 percent sure on everything.  
21 But, I mean, it includes all my subcontractor  
22 invoices that I have got to this date. You know,  
23 just, I guess, you know, everything -- Enterprise.  
24 Yeah, I mean, there's quite a few of them that are  
25 on here that are accounted for -- that I know that

1 are accounted for. U.S. Bank, again, it depends on  
2 whenever it's -- whenever we split up those costs  
3 that are required for different jobs.

4 Q. Okay. And who is Marilyn Spell, \$5000?

5 A. She is the cleaning lady that cleaned the  
6 first floor.

7 Q. Okay. Now, this would not account for  
8 any outstanding amount owed to any subcontractor or  
9 supplier, correct, or anything spent after this  
10 June 18 date?

11 A. Correct.

12 Q. Do you know if there's been additional  
13 expenses past June 18th?

14 A. Yes. And if there has, they've been  
15 added to the folder that you guys have.

16 Q. So you're saying we have -- whatever we  
17 have is the most up-to-date job cost report?

18 A. Yes. Again, even after the time that  
19 this was handed to you guys, I continued to put  
20 files in there from afterwards.

21 Q. Okay. I thought we just got one  
22 production from Encore to our subpoena. Are you  
23 saying that you have supplemented that subpoena  
24 response?

25 A. Yeah. I just -- every time I get

1 something new, I just continue to put in there.

2 Q. Okay. Put it in where?

3 A. To the Dropbox folder and the link that I  
4 sent.

5 Q. Okay. I wasn't aware that we were  
6 supposed to check that. That doesn't mean somebody  
7 in my office --

8 A. I'm sorry. I was just trying to make it  
9 easy for everybody, just -- you know, just as far as  
10 I get stuff in. Because I got to -- again, if I'm  
11 going to start adding them to individual folders.

12 Q. Okay. That's news to me. I did not  
13 realize that you had updated the Dropbox. It's  
14 possible that others in the office knew that. So  
15 I'll make sure to go and look and see what  
16 additional information may be there.

17 All right. So if we go to book two, I  
18 have some questions for you in here. All right. So  
19 the first one -- so if you are on book two, this is  
20 going to be in Tab N. And these are essentially  
21 e-mails. We're not going to go through all of  
22 these. I've got a few tabbed that I want to ask you  
23 about.

24 A. Okay.

25 Q. All right. So let's look at Tab 6 will

1 be the first one that I'll ask you something about.  
2 And the Bates on this is Encore 12.0153 through 155.  
3 Is that what you have?

4 A. 153 through 155. Yes, ma'am.

5 Q. All right. So again, we'll start at the  
6 top. It's from Jeff Major to the owner, Joey Odom,  
7 with a cc to you, Aden, and somebody at Claire  
8 Designs. Who is the person that Claire Designs?

9 A. She is the designer. She picked all the  
10 material.

11 Q. For the first floor, or for the whole  
12 building, or what?

13 A. Yeah, for the whole building.

14 Q. Okay. And that means the paint colors  
15 and all the finishes, everything that had to be  
16 redone?

17 A. Yep.

18 Q. Okay. So this is dated October 6, 2020.  
19 And Mr. Major says, second floor office 218 change  
20 order. And then he says, approximately 100 linear  
21 feet new walls, four or five plus or minus new  
22 offices, et cetera. I don't really want to  
23 necessarily read all that in the office -- I mean,  
24 into the record.

25 If you go on down, Mr. Odom is talking

1 about carpet squares. And then further down from  
2 that, Aden is sending you and others an e-mail.

3 Good morning, Joey, we are waiting for  
4 Claire with H of B Designs to get us the actual  
5 numbers from your products. Should have those soon  
6 and we can source the samples ASAP for you.

7 So what's going on right here in this --  
8 the bottom e-mail is that you are waiting on the  
9 designer to get information to you, right?

10 A. Yes.

11 Q. Okay. And then at the top e-mail,  
12 Mr. Major is talking about a change order to the  
13 second floor. What is that about? What change  
14 order is he referring to?

15 A. Which -- you are on the first page,  
16 correct, 12.053?

17 Q. 153.

18 A. Yes, 153. And at the top of the page, it  
19 just says, second floor, office 218 change. I have  
20 no idea. This is a -- looks like this is a reply,  
21 so there was a little bit more to this e-mail than  
22 what I'm looking at, I'm guessing.

23 Q. Look at the next page, 12.0154 down at  
24 the bottom where Aden sends somebody at Claire  
25 Designs and you and the owner an e-mail and says.

1 I'm copying my operations manager, Evan,  
2 on this e-mail, as he will be the one assembling all  
3 the materials and list of things we need to get  
4 approvals on so we can get rolling on construction.

5 So in this e-mail, Aden is introducing  
6 the person at the design center to you so that you  
7 could get going on picking these -- selecting the  
8 materials and finishes, right?

9 A. Yep.

10 Q. Is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And so I got that part of it as  
13 far as what's happening on October 6. But why is  
14 Jeff Major involved in selecting finishes in the  
15 building?

16 A. I -- no clue. Everything that  
17 happened -- you know, if you can see this at the  
18 beginning, I mean, everybody in this whole entire  
19 deal was included on these e-mails. And after that,  
20 you know, it tapered off. So, I mean, they were --  
21 they were on all these e-mails from the get-go.  
22 Jeff -- again, Jeff had a fairly good relationship  
23 with the owner. And so I don't know if that was a  
24 request. I don't know. But he -- I do know that we  
25 were all on these e-mails at the beginning.

1 Q. Okay. And then let's look at the one  
2 under Tab 7, Encore 12.0228 and 229. This e-mail is  
3 dated October 18, 2020. It's from you to Mr. Odom  
4 with a cc to Jeff Major. And you say.

5 Joey, this week is an extremely important  
6 week. I will be looking for final design choices.  
7 I would like to meet with the designer to get some  
8 information.

9 And then the last sentence of that  
10 paragraph, you say.

11 I just need all this information to get  
12 them signed up, so I can start ordering these long  
13 lead time materials.

14 And then in your third paragraph, you  
15 say.

16 I sent out requests for proposals to  
17 electrical, that's Jacque, HVAC, Ducote Air and  
18 Electric this weekend.

19 And then if you go down to near the  
20 bottom, it says.

21 Once I start getting these proposals sent  
22 back to me, I will be writing up subcontracts for  
23 them.

24 So in this e-mail, it looks like you are  
25 full steam ahead. You are working on October 18 on

1 getting the information that you need for the  
2 material selections, so that you can start lining up  
3 your subcontractors and suppliers, right?

4 A. Yes.

5 Q. All right. Let's go to Tab 10. This is  
6 on Encore letterhead. The Bates number on this is  
7 Encore 12.0296 through 12.0301. All right. This  
8 document is labeled schedule of events and updates,  
9 correct?

10 A. Yes.

11 Q. And the date on this is November 8, 2020,  
12 correct?

13 A. Correct.

14 Q. All right. So the attendees -- are these  
15 in person meetings, or by conference call?

16 A. They were conference calls.

17 Q. So you attended for Encore, Joey Odom  
18 attended for Four-O and DHS attended Michael Harvey,  
19 Jonathan Hendrix, Michelle Mendez, Stacy Welt, and  
20 Andrew Vanchiere, correct?

21 A. I don't think -- I think Michelle was not  
22 on any of these -- on any of these. This is, I  
23 guess, whenever I was making these, I didn't know  
24 who would be on them. And so -- but, yeah, I think  
25 it was Michael Harvey and Jonathan were the first --



1 they were on there quite a bit on all these calls.  
2 But this is just a guess of who is going to be on  
3 there. I don't even know who's going to be on these  
4 calls.

5 Q. Okay. So this is an agenda, something  
6 you send out before the call?

7 A. Yes. Yeah, this is -- doesn't have  
8 anything to do with who was actually on the call.

9 Q. Was Andrew Vanchiere on these calls?

10 A. He was on the first one, I think. He was  
11 on -- at the beginning, he was on one of those. I  
12 know that. I don't exactly remember which one he  
13 was on, but it was at the beginning whenever we were  
14 having these.

15 Q. Okay. And we can go through -- there are  
16 a lot of them in here --

17 A. Yeah.

18 Q. -- all in the same format. So tell me  
19 who asked for these conference calls?

20 A. I guess it's something that we typically  
21 do. So I think it was maybe GSA asked for them, or  
22 I'd say that I would give them -- this is kind of a  
23 typical something that we do.

24 Q. All right. So and all of them have the  
25 same template or format, A is going to talk about

1 the schedule. You have got your status where you  
2 talk about the construction stage. And you give  
3 details of, you know, break down the process and  
4 what's happening at each. You have a section called  
5 scheduling. You have a section --

6 A. There's a lot of fluff in here, yes.  
7 That's kind of breaking it down so that they can see  
8 the process.

9 Q. So A is schedule, B is progress, and then  
10 you take the week looking forward, C is designs and  
11 changes, and D is quality assurance, quality  
12 control. That's kind of the breakdown. Actually it  
13 keeps going. Safety and security, engineering  
14 status, and miscellaneous. And you use this same  
15 agenda items each week, or each time you had one of  
16 these calls, right?

17 A. Yeah, around the same format. I  
18 rearranged it sometimes.

19 Q. You would -- you cut out.

20 A. I'm sorry. Yes, I would use the same  
21 format. I changed items in it, took some items out,  
22 and whatnot. But I mean, it's generalized the same  
23 format.

24 Q. Okay. And you would give updates. And  
25 the purpose was to give the owner and the first

1 floor tenant updates on the progress of the work?

2 A. This was not for the owner. This was  
3 specifically for GSA.

4 Q. Okay. Did you say that there's -- did  
5 you say that there was fluff in it?

6 A. Yeah. Again, I just -- I put items in  
7 there that I could discuss with them that I know  
8 that they would be interested in talking about.

9 Q. Okay. But is this information that you  
10 include in here, it's accurate information?

11 A. This is some of the items where I put  
12 where I was hedging for Joey. And again, that's  
13 what I'm saying as whenever going to the -- to  
14 fluff. I added items in here that I knew that they  
15 would be interested in discussing. And so while --  
16 you know, with my scheduling and all those items, as  
17 well.

18 Q. Okay. What I asked you was -- and I  
19 appreciate the response. But I asked you whether or  
20 not the information that was contained in these  
21 reports to GSA were accurate, and you said that you  
22 were hedging. Does that -- does the word hedging  
23 mean not accurate, the information is not accurate?

24 A. This would not reflect the exact items.  
25 Some of it's accurate, some of it's not accurate.

1 Q. Okay. So did you -- did Mr. Odom ask you  
2 to make inaccurate statements to GSA?

3 A. Not necessarily. Again, just in general  
4 discussions. I knew he was under pressure from GSA.  
5 And so I knew that he was -- he was my client. And  
6 so I -- again, I was trying to make every  
7 accommodation for him I could to stop any of the  
8 possibility of the constant e-mails that were going  
9 back and forth. I was trying to take on the blame  
10 essentially.

11 Q. Blame for what?

12 A. For anything. For any updates that  
13 weren't -- because, again, he had a lot going on.  
14 So I took that on for him from GSA.

15 Q. Okay. Let's look at some of the items  
16 for construction stage. And obviously for time  
17 reasons, we don't have time to read every single  
18 thing. But you are free to take as much time as you  
19 need to read any of this. But under construction  
20 stage, you have stage one is job evaluation, some of  
21 it's still in progress, and some of it is still  
22 completed, right?

23 A. Yes.

24 Q. And then stage two is your engineering  
25 architecture design, and you've got some interior --

1 you've got it broken down by interiors and  
2 exteriors. And some of it, again, is completed and  
3 some of it's in progress, right?

4 A. Yes.

5 Q. Next you go to submittal sign off. You  
6 have essentially just got a blueprint here for the  
7 process of how all this works. You've got the  
8 submittals sign off, interior, exterior, some is  
9 completed, and some is still in progress, right?

10 A. Yes.

11 Q. And then you go to stage four, which is  
12 getting your subcontractor estimates, and subs lined  
13 up, and that's in progress, correct?

14 A. Yes.

15 Q. And again, just for time element, I'm not  
16 going to keep reading all this. But we could. And  
17 the bottom line is that you've got -- you are  
18 working at this point, there's lots of stuff that's  
19 being done. You are moving forward with this  
20 project, correct?

21 A. Yes. It was probably by that time where  
22 Joey was certain that he was going to go with us.

23 Q. Okay. And this is getting close to the  
24 time that the state issues your license. You are  
25 about a week away from it at this point, or a little

1 more than that, right?

2 A. Yes.

3 Q. Okay. Next -- if you go to the next  
4 page, which is 12.0297 under scheduling. You say.

5 Due to changes in scope, a schedule will  
6 be produced at a later date. Schedule could  
7 drastically change from week to week until exterior  
8 elevation dry in date is established.

9 Do you see where you wrote that?

10 A. Yes.

11 Q. All right. If we go to the status of  
12 progress last week looking back. And again,  
13 Mr. Monheiser, just for purposes of brevity, and for  
14 no other reason, I can't really read all this stuff.  
15 But for the breakdown of interior, you've got  
16 insulation, painting, flooring, mechanical,  
17 electrical. And again, if you scroll down it, some  
18 of the work is completed, and some of it is still in  
19 progress, correct?

20 A. Yes.

21 Q. And if you go to page 12.0298,  
22 design/changes, there's the whole section in there  
23 on mechanical changes where you are giving options  
24 to deal with the -- the issues that we've already  
25 talked about in your deposition about the air

1 handling units, and you give the options, three of  
2 them, A B, and C, listed there, correct?

3 A. Yes.

4 Q. All right. Go to page 12.0299 under  
5 safety and security. You have got an entry for  
6 COVID I wanted to ask you about. Number 1 is CDC  
7 guidelines for COVID. Number 2 is PPE requirements  
8 for active construction areas. So tell me what  
9 impacts there were to this project because of COVID?

10 A. I didn't -- we didn't have one. It was  
11 just at that point whenever they would -- this is  
12 actually more about whenever they were coming on --  
13 if they would come onto the site, we just wanted to  
14 make sure that they were wearing masks. And access  
15 waivers had to deal with the same thing of, if you  
16 are going to be walking onto an active job site,  
17 just be aware that this is an active job site.

18 Q. Okay. So there were no -- my  
19 understanding is that construction was an exempt  
20 activity, or job. And so there weren't any times  
21 that you had to shut down, correct?

22 A. No.

23 Q. I mean, I'm correct that you don't have  
24 to shut down because --

25 A. Right.

1 Q. -- of COVID?

2 And so the only thing you had to do is  
3 this added layer of following the guidelines and  
4 what the PPE requirements were, and essentially that  
5 boiled down to making sure people were wearing  
6 masks; is that right?

7 A. Yes.

8 Q. All right. Did you have any problems  
9 with labor shortages, or was that part of the  
10 reasons why sometimes you had trouble getting labor  
11 out there is because people might be sick, or it was  
12 harder to find people?

13 A. I had plenty of labor to choose from at  
14 this point.

15 Q. Were you getting any feedback that  
16 because of COVID illnesses, or COVID quarantines,  
17 that there were some shortage or reasons why people  
18 couldn't show up?

19 A. No. I mean, again, specifically to this,  
20 I don't -- no, I don't think so. I don't remember  
21 COVID ever being an issue whatsoever.

22 Q. Okay. All right. And then under the  
23 engineering status, under part two, you have  
24 redesigning entire exterior envelope takes time.  
25 And that's was -- that's referencing both the



1 windows and the exterior panels, the work that BE-CI  
2 was doing?

3 A. Yes.

4 Q. All right. Look at Tab 11 and turn until  
5 you see at the top Encore 12.0311. Do you have that  
6 one?

7 A. Yep.

8 Q. All right. So we're going to be looking  
9 at 3.11 through 3.13. This is another one of those  
10 schedule of events and updates. It's got the same  
11 date on it of November 8, 2020, but it is different  
12 from the one we just looked at. It may be -- this  
13 is a guess, so I'll ask it as a question. You can  
14 tell me if I'm wrong. That you take -- after the  
15 conference call, you may make edits to it based on  
16 what people have said. If you compare those two,  
17 you'll see that there are some differences with some  
18 notes in it?

19 A. Yes.

20 Q. Okay. So this one is looks like maybe  
21 after the call, and you have got your name there,  
22 Evan, with a colon, and then you'll have some notes  
23 in there. So, for example, on the first page, under  
24 elevations, your note says.

25 Working on sheathing contractors estimate

1 and start date. The contractor still needs some  
2 engineering details before he provides an estimate.  
3 A contract with the contractor is in the process of  
4 being made to help expedite the process.

5 So at this point, this subcontractor  
6 that's doing the sheathing is still waiting on  
7 information that he needs as far as engineering  
8 details, correct?

9 A. Possibly. There's a possibility. Again,  
10 I've -- in this deal, these are maybe items that  
11 happened a week ago and I'm just bringing them up to  
12 them at this point. Not giving too much information  
13 of what I got. Essentially what I am keeping from  
14 GSA is the fact that Joey hasn't signed my contract  
15 yet. And so with all this going on, again, I put in  
16 items that we did have general discussions in here  
17 about.

18 But, yes, you know, it's -- I may have  
19 already had that, possibly cross reference this with  
20 whenever I did receive an e-mail about this  
21 sheathing or about the sheathing and the WRB that we  
22 were going to be using. Would kind of give you a  
23 timeline of how far I was delaying this information  
24 going to GSA. And so -- or if that's about that  
25 time whenever I was still waiting for this

1 information.

2 Q. And at this point on November 8, did you  
3 disclose to GSA that you were still -- Encore was  
4 still waiting on its state license?

5 A. No, I was not. I did not disclose that  
6 to them at all.

7 Q. Okay. Look at the next page, 12.0312.  
8 Down under -- this week looking forward, interior,  
9 Michael: So Michael is asking this question. And  
10 that's referring to the GSA rep, correct?

11 A. Yes.

12 Q. Asked has interior work started. It says  
13 replay, but I think that means reply?

14 A. Yes. Sorry, reply.

15 Q. Reply came from who, you or Mr. Odom?

16 A. I'm not sure.

17 Q. Okay. And the answer was, the reply was.

18 No, it will not start until outside is  
19 dried in. If we can get the sheathing and WRB  
20 details, we can start the process ahead of time.

21 So somebody said that in reply. And then  
22 you -- your name is there, Evan: You stated.

23 The duration of the project probably  
24 won't change, only the start date.

25 Did you tell GSA that even though you

1 couldn't start, that you were going to somehow be  
2 able to condense this and finish it by December  
3 2020, the end of --

4 A. Again, this is me hedging for the client  
5 and making sure that they know that we'll do  
6 everything that we can to finish it by the date that  
7 we've told them.

8 If you -- and I understand, you guys are  
9 looking at this from afar. But in this situation,  
10 it was -- it was taxing. And so, this is, again,  
11 stuff that I saw Joey struggling with. And he's --  
12 Joey is a fairly short -- gives short replies to  
13 things. He's not very elaborate. And so he was  
14 taking on a lot of heat from GSA over some of these  
15 items.

16 And so, again, I went to him, and I said,  
17 hey, listen, let me take on GSA. I will -- I will  
18 take -- I will make sure that they are satisfied  
19 with the information that they are getting. And so  
20 that's -- this is just me taking on that  
21 responsibility for him.

22 And Michael, he's -- I think he was a  
23 contractor, or his father was a contractor. And so  
24 he knows the construction lingo. And so it was a --  
25 we had good generic discussions over the overall

1 work that was being performed. And tried to keep it  
2 off of anything else that was going on.

3 Q. Okay. So let's go to Tab 20. This is  
4 Bates number 12.0545 through 5 -- I have through  
5 549. Some of this looks like e-mails. Yeah, let me  
6 review that. The Bates number that I have for this  
7 is 12.0545 through 547. All right. So this is  
8 another one of those schedule of events and updates.  
9 This one is dated December 9.

10 So for context, this is before your  
11 contract date, but after your go-ahead date of  
12 November 24. And after Encore had received its  
13 license. So if we go down to the first section on  
14 this page of scheduling, it lists delays, ceiling  
15 tile back order, that is correct, accurate  
16 information?

17 A. I don't remember exactly what the ceiling  
18 tile situation was at that point.

19 Q. The other delay that you listed is  
20 exterior WRB backordered one week. Is that correct  
21 information that you gave the GSA?

22 A. I can't remember.

23 Q. All right. And then the third delay was  
24 wall transition detail requires a mockup. Mockup  
25 materials we order Thursday, December 12. All

1 right. So, again, if we go down to the status  
2 starting under, B progress. We can -- and again for  
3 brevity, I'm not going to read all of this. But if  
4 you look at the interior electo demo has finished  
5 the first floor.

6 If you look down under interior, item A5  
7 it says mechanical VRF system report received from  
8 the mechanical engineer. If you look at the  
9 exterior, you see an update that you had received  
10 finalized details on exterior paneling system, but  
11 note delays on manufactured flashing. And will  
12 adjust paneling installation schedule.

13 So just without going further, there's  
14 work that's being done at this point, you are moving  
15 ahead. And you are noting some delays caused by  
16 receiving materials, and backorders, and such,  
17 correct?

18 A. Yeah. I mean, you could probably  
19 cross-reference some of these items with anything  
20 that -- materials that I have actually ordered, or  
21 reached out to subs or supply shops with to figure  
22 out where we -- where any materials are. The  
23 only -- the only bit of material at this point that  
24 we were focused on was that WRB.

25 And again, we weren't waiting for the

1 panels to be installed on the outside of the  
2 building to start the construction on the inside of  
3 the building. All we needed to do was get it dried  
4 in, which means demo, replace the sheathing, and put  
5 on the WRB. And at that point, the building should  
6 be dried in.

7 Q. Okay. All right. So if we move on to --

8 A. Again, that's what I'm saying when, you  
9 know, I'm adding fluff in here to add discussions in  
10 here about other topics other than telling them that  
11 Joey hasn't signed my contract yet, and that's why  
12 I'm not starting.

13 Q. And again, Mr. Odom had actually given  
14 you a go-ahead on November 24, right?

15 A. Joey did give me a go-ahead to do items  
16 on November 24, but they were small items. I had --  
17 you know, I'm prepared to bring out 20 people at any  
18 point in time. So again, that's not, you know, his  
19 commitment was, you know, given to me. And even  
20 after this, even after the 24th, him and I were  
21 still having discussion.

22 Even the night that he signed my  
23 contract, he was still going back and forth between  
24 signing it, and me just leaving, you. And again, he  
25 was always referencing to the fact, you know, I'm

1 going to pay you for what you've done, and  
2 everything that you've done as far as your  
3 structuring, this -- the job.

4 All the materials and all, he goes, you  
5 know, I do not -- I'm not going to hold that from  
6 you. And that all -- that went up maybe even till  
7 the last -- until 19th and even in the daytime of  
8 the 20th. So again, I'm not -- there was -- he did  
9 not have money. And so that was his main topic, was  
10 that this job was going to cost an estimated 1.4 to  
11 1.8 million dollars, and he didn't have that.

12 And he was further frustrated with the  
13 fact of nobody has been in contact with him about  
14 funding. Nobody was getting back to the people that  
15 he has hired to get funding. That's all these  
16 conversations. I was right nextdoor to him.  
17 Actually at this point, I think I was in 620. So  
18 yeah, I mean, all these notes, it's just, again, I'm  
19 adding stuff to talk about in these meetings to  
20 avoid the actual real discussion of where am I at  
21 with GSA, or with the building.

22 Because again, I -- you know, I had guys  
23 ready to go from, you know, mid-November. And so I  
24 can't to be, like -- I can't tell them, okay, guys,  
25 let's go without having an actual contract signed by



1 Joey Odom. I'm not going to bring out 20 people or  
2 10 people to do the exterior without that commitment  
3 from Joey, you know, with this contract.

4 Q. And so let's look at Tab 23 so we can  
5 kind of move through some of these other schedules.  
6 Looking at Encore 12.609 through 612. And again,  
7 this is one of the schedule of events and updates  
8 for DHS. This one is dated December 16, 2020. What  
9 I --

10 A. -- that be new schedule on this -- at  
11 this point.

12 Q. What's that?

13 A. We are on -- I apologize. We are on the  
14 Path B at this -- at this point. This is  
15 definitely -- this is way later. My updates did  
16 change at -- as far as the amounts of information  
17 that I was providing, and the discussions that we  
18 were having with DHS. I was definitely on a little  
19 bit more of week to week path, depending on what my  
20 schedule was at this point.

21 Q. Well when you say there was a change,  
22 does that mean that the information that is now  
23 being provided to DHS is more forthcoming, it's got  
24 more information in it that is accurate?

25 A. No. They became a little bit more

1 involved in the project. So my updates changed, as  
2 far as what was going on inside that building. I  
3 couldn't -- essentially I could not hedge any longer  
4 for Joey for this. Because -- and I actually think  
5 there was quite a few people in this deal that were  
6 hedging for Joey as far as that were a part of DHS.

7 And so, you know, we would have people  
8 stop by and check on progress. And so some of these  
9 items I did not have. You know, they were  
10 statements that we were -- I would put on there,  
11 there would be very little discussion, other items  
12 would have large items of discussion.

13 Q. Okay. Let me ask you about some of the  
14 items on here. On the first page, you have got a  
15 section under interior progress for delays, and you  
16 note ceiling tile back order and looking at  
17 distributors for quantities, correct?

18 A. Yes. And it was at that point where the  
19 ceilings -- the ceiling tile was not in at the shop.  
20 I can't remember the exact shop that was located in  
21 Lake Charles. But, yeah, they did not deliver that  
22 product to there at that point. And so we were  
23 having to drive all the way around Texas and  
24 Mississippi to get the product.

25 Q. Okay. And if we look at the next page,

1 which is 12.0610 under exterior progress, you have  
2 got a section three on delays, half day due to rain,  
3 adding two days per side to demo because of  
4 difficulty of removing the old panels and having to  
5 carefully remove panels above the windows. You show  
6 those as reasons for some delay, correct?

7 A. Which item was that? I'm sorry.

8 Q. Exterior progress, item number 3.

9 A. I got you. Okay. Yep.

10 Q. Okay. And then under week looking back,  
11 you mention half day due to rain for demo. That  
12 might be the same one. Half day for WRB due to  
13 temperature not meeting ASTM standards. And total  
14 of 1.5 days for weather. And so here in these  
15 progress reports, you're noting the actual delay --  
16 causes of delay, correct?

17 A. Yes.

18 Q. All right. You have another update under  
19 Tab 27. This one the Bates is Encore 12.0709  
20 through 713, and this one is dated January 6, 2021.  
21 And again, under exterior progress, you have a  
22 section four about delays, eight total days delayed,  
23 three due to weather, two due to window removal, and  
24 three days for details of flashing specs on  
25 unforeseen window and inside corner adjustments,

1 correct?

2 A. Yes.

3 Q. You have noted those as reasons for some  
4 delay, correct?

5 A. Yes.

6 Q. All right. And then if we go to --

7 A. And you can see in that update, you can  
8 see the area where we took out the windows and  
9 framed in. That photo is on there, just in case  
10 anybody was wanting to know what we had to do.

11 Q. Okay. I see it. Let's go to Tab 28,  
12 which is another one of the schedule of events and  
13 updates dated January 14, 2021. The Bates number is  
14 12.0773 through 776. Now here you've got an item  
15 three -- under exterior, you have got an item three  
16 of punch list. Does that mean at this point on the  
17 exterior you are to a point where you can start  
18 doing the punch list? Are we talking about a final  
19 punch list or an interim punch list?

20 A. It says three punch list A, WRB touchups,  
21 sheathing touchups.

22 Q. Right. And what I'm asking is. Does  
23 that mean at this point, the exterior progress is to  
24 the point where you can do a final punch list, or is  
25 this just an interim punch list that somebody has

1 done?

2 A. This is just an WRB punch list and a  
3 sheathing touchups that I pointed out.

4 Q. So the work is done, but -- and maybe I'm  
5 wrong. But I thought a punch list was you're  
6 getting to the end of the work, and punch list tells  
7 you, no, here's what actually has to be done to get  
8 the work completed?

9 A. Yeah, I mean, but it's finishing getting  
10 the building dried in.

11 Q. So it's for just a component of the  
12 exterior work?

13 A. Yes, ma'am.

14 Q. Okay. And there again it has delays,  
15 eight total days delayed. But there's no breakdown  
16 as to what actually caused the eight days, correct?

17 A. Correct.

18 Q. All right.

19 A. And this is eight days delayed at the  
20 start of whenever they started.

21 Q. Who started?

22 A. That would be Associated Waterproofing.

23 Q. Okay. Then if we look at Tab --

24 A. They started on December 15 or 16, maybe  
25 it wast 18, around that time.

1 Q. Let's look at Tab 29. This is Bates  
2 number 12.0798 through 803. It's the same type of  
3 document, schedule of events and updates. This one  
4 is dated January 20, 2021. And what I wanted to  
5 point out here is, if you go to part C on the  
6 interior progress, under mechanical, finalizing  
7 design phase one. It says, the engineers have  
8 missed their deadline. That's referring to a ADG  
9 and design of the HVAC system; is that right?

10 A. Yes. But I will go back to the point  
11 that we -- they missed their deadline, but we were  
12 actually still in discussions. The industrial  
13 refrigerant was in discussions with Mitsubishi. And  
14 I would have to look at whenever we got those  
15 submittals from ADG to figure out whenever we  
16 could -- not ADG, but from Mitsubishi, to determine  
17 whenever we got all of their submittals.

18 Q. All right. Let's go to Tab 32. And this  
19 is Encore 120854 through 56. It's another schedule  
20 of events and updates dated February 4, 2021. Under  
21 exterior progress under delays, it says, 16 total  
22 days delayed. Do these delays that you're showing  
23 in the schedule of events and updates, do they  
24 correlate or show up anywhere in your Microsoft -- I  
25 think it was called Microsoft Projects that you

1 used?

2 A. At this point, I was not -- I was not  
3 using Microsoft Projects for this. I may have  
4 played around with it to do some experimenting. But  
5 again, at some point I stopped -- I tried to -- I  
6 was not giving out schedules because we were not on  
7 the original path. And so we were scrambling around  
8 to put things together.

9 Q. I understand. So at some point, you  
10 stopped updating Microsoft Project schedule; is that  
11 right?

12 A. Yes.

13 Q. Okay. All right. Let's go to Tab 36.  
14 This is Encore 12.0875 through 76. This is an  
15 e-mail from you to Joey Odom and Michael Harvey  
16 dated February 17, 2021.

17 Good evening, I do not have much of an  
18 update since last week. I was supposed to get a lot  
19 of information in last Thursday about the VRF  
20 exterior lighting, ceiling tiles, plumbing, and  
21 schedule. However, we have been experiencing some  
22 difficulties with communications and material  
23 deliveries from our suppliers dating back to  
24 Thursday 2/11/21, due to weather and travel  
25 restrictions in Texas.

1           And then you go through a lot of detail,  
2 you know, showing -- pretty much giving a lot of  
3 specific detail about that ice storm, which I won't  
4 go through all of it. But so the purpose of this  
5 e-mail was to update the owner and GSA on delays  
6 caused by the winter storm?

7           A.     This e-mail was to update GSA. I've  
8 already spoken with Joey about all of this.

9           Q.     Okay. And this was essentially updating  
10 GSA about delays caused by the winter storm,  
11 correct?

12          A.     Yes. And showing Joey that I have  
13 updated GSA.

14          Q.     Okay. Let's go to Tab 44, which is  
15 Encore 12.1016 through --

16          A.     What was that?

17          Q.     -- 1023. So it's Tab 44. Actually let  
18 me say that Bates number again. Because it seems  
19 like --

20          A.     12.1016 is what I've got.

21          Q.     Right. Okay. So for the record, this is  
22 12.1016 that we are looking at through 1023. And  
23 this is a schedule of events and updates document  
24 dated April 1, 2021, correct?

25          A.     Yes.



1 Q. All right. This one has substantial  
2 completion dates for the exterior of April 8, 2021.  
3 Do you see that?

4 A. Yes.

5 Q. So at this point, at the beginning of  
6 April, you expected to be substantially complete  
7 with the exterior within a week, by April 8,  
8 correct?

9 A. Yes.

10 Q. And did you -- did you meet that date?

11 A. It depends on the definition of  
12 substantial completion.

13 Q. Okay. Did you come --

14 A. I don't remember exactly when everything  
15 was -- that we wanted to get equipment out of there  
16 for parking, you know. Some of these items were  
17 taken care of depending on a week-by-week basis.

18 Q. Okay. And then if you look at interior,  
19 it says substantial completion 4/14 through 4/16.  
20 So this date on April 1, based on all the  
21 information you had at that point, you expected to  
22 be finished within about two weeks. And is that  
23 talking about the first floor, the second floor, or  
24 both?

25 A. This is to -- I think this is for the

1 first floor.

2 Q. Okay. And did you achieve that  
3 substantial completion?

4 A. I do not remember.

5 Q. What document would we look at to say  
6 that Encore was substantially complete? What  
7 document do you say would reference your completion  
8 of the first floor interior?

9 A. That would be an owner and GSA item. I'm  
10 guessing that would -- whenever they accepted the  
11 interior work.

12 Q. Okay.

13 A. It's in my log. That date would be in my  
14 log.

15 Q. Well, I guess where I'm coming from. Is  
16 it possible that Encore believes it's finished, and  
17 says, hey, we're finished. And for whatever reason  
18 beyond your control, GSA can't get out there and do  
19 an inspection and/or acceptance, it's possible that  
20 what you called substantial completion differs from  
21 their acceptance date, correct?

22 A. Yeah.

23 Q. And so that's what I was wondering. Is  
24 not from GSA's perspective, but from Encore's  
25 perspective, what document do you have to say, hey,

1 we are substantially complete with the first floor,  
2 please come do your final walk-through?

3 A. Yeah. That -- again, that would be --  
4 that would be that GSA substantial completion. But,  
5 you know, and we do submit items to, you know,  
6 substantial completion documents to the owner to  
7 sign whenever we are completed with larger items.

8 Q. Does Encore have that document in its  
9 production? I just don't remember what it looked  
10 like. What would --

11 A. No, we do not. We haven't -- we haven't  
12 filled them out yet.

13 Q. Okay. Would we -- would the punch list  
14 that we looked at for -- the GSA punch list, would  
15 that be about the time that Encore advised the owner  
16 and GSA that you thought you had reached substantial  
17 completion?

18 A. Depending on which -- whose punch list it  
19 was.

20 Q. The GSA. Remember we looked at that one  
21 yesterday? The reason I ask --

22 A. -- two of them. There was one that I  
23 made for my subcontractors, and the one that GSA  
24 made.

25 Q. Right. So before GSA would go out there

1 and do its inspection, Encore would advise the owner  
2 and/or GSA that you believed you had reached  
3 substantial completion, and then they would come out  
4 and do their inspection, correct?

5 A. Correct.

6 Q. So whatever date is on that GSA  
7 inspection, prior to that Encore had given notice to  
8 the owner and/or GSA that you believed you were  
9 complete, right?

10 A. Correct.

11 Q. Okay. And this sheet 12.1016, under  
12 exterior progress, under delays, has 41 total days  
13 delayed due to weather, right?

14 A. Yes. And that's just the completion of  
15 the siding.

16 Q. Okay. That's the exterior --

17 A. It's not the dry in date. The dry in  
18 date is the most important part of this entire  
19 scenario for us to start interior work.

20 Q. Okay. Let's turn to Tab 46. This is  
21 Encore 12.1047 through 51. Again, it's a schedule  
22 of events and updates. And this one is dated  
23 April 15, 2021. And for your interior substantial  
24 completion date, you show 4/16, which is the next  
25 day. It does say under it, missing the due date to

1 delays from finishers, new date is 4/21.

2           So at this point when you wrote this, you  
3 were within one day of reaching your anticipated  
4 substantial completion. But you note that you had  
5 to push it back to April 21 because of delays from  
6 the finishers, correct?

7           A.     Yes.

8           Q.     And down below for exterior scope of  
9 work, it's been 49 days delay due to weather,  
10 correct?

11          A.     Again, as far as the exterior panels and  
12 installation, yes. But that's -- the dry in date is  
13 whenever we could start interior work.

14          Q.     Okay.

15          A.     I mean, this saying 49 delay -- 49 total  
16 days delay due to weather on the exterior is  
17 essentially at this point not a factor because the  
18 building is dried in. We could do interior work.

19          Q.     Okay. Let's look at Tab -- now we're  
20 moving on O, Tab O, which is -- we pulled from your  
21 subcontractor documents. And I have a question for  
22 you about the very first tab, Tab 1. All right. So  
23 Encore 151 is an Encore subcontractor estimate,  
24 right?

25          A.     Yes. It's an estimate that I give to a

1 subcontractor, if they want to give me an  
2 individualized estimate.

3 Q. So again, this one is Graham Martin  
4 Insulation. I know I've asked you this a lot about  
5 the spray foam insulation on the roof decking. But  
6 here it is again on this subcontractor estimate. So  
7 I just want to understand. This is Martin  
8 Insulation giving you a quote for these scopes of  
9 work?

10 A. Yes.

11 Q. Okay. But you did not hire them to do  
12 that scope of work, that was separate?

13 A. Correct.

14 Q. The owner hired them. Okay. Look at  
15 Tab 2. I have a question for you about -- you have  
16 to look until you see Encore 209.

17 A. Yes.

18 Q. All right. So 209 is a -- this looks  
19 like one of your subcontracts that you use, right?

20 A. Tab 2, I've got 212 is my first one in  
21 Tab 2.

22 Q. Yeah. Flip until you get to -- flip a  
23 couple of pages --

24 A. Okay. Yep.

25 Q. -- you see Encore 209. So this document,

1 it's a three-page contract. This was Encore's  
2 standard form that it used for subcontracts?

3 A. Yep.

4 Q. All right. And this one appears to be  
5 with King Construction for the flooring scope; is  
6 that right?

7 A. Yep.

8 Q. Did King actually do the flooring? Were  
9 they the sub for that?

10 A. No. This is for the ceiling tiles. The  
11 ceiling tile -- this says scope of work, provided --  
12 provide and install finish work ceiling grid, knock  
13 down door frames, reinstall doors, install door  
14 closers, ceiling tiles. That says -- that's what it  
15 says in this scope of work.

16 Q. Okay. And that was -- if you look on  
17 page 3, the contract amount was \$89,210 correct?  
18 I'm looking at 209.03.

19 A. Yeah. 89,000.

20 Q. Okay. The reason, I guess, I got  
21 confused. If you go back to the first page right  
22 above King Construction, under Exhibit A, it says  
23 flooring scope of work.

24 A. That's just a mistake that they didn't  
25 change -- that wasn't changed. It says the scope of

1 work provided -- provide and install. I mean,  
2 that's pretty specific of what it is.

3 Q. Okay. And this is not a signed contract.  
4 Did you say you did have signed contracts with all  
5 your subs?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

9 Q. Okay. So if I don't see -- if I don't  
10 see a signed version, I can ask you for the signed  
11 contracts for any of your subs, right?

12 A. Yes.

13 Q. All right. What I want to do is take  
14 about a five minute break because -- well, wait.  
15 Let me see. I might have a couple of questions  
16 here. In other words, I'm getting very, very close  
17 to finishing. And so I'm looking around to see  
18 what's left. Oh, I know what I wanted to do.

19 I got a revised letter from the State  
20 licensing board. So just let me show you that.  
21 Because I'm going to offer this, or attach it, as  
22 Exhibit 2. And I'll send it to the court reporter.  
23 But let me share screen and just show it to you.  
24 All right. So there it is. That's the same letter  
25 that we looked at yesterday, but they fixed the date



1 on it.

2 (EXHIBIT NO. 2 IDENTIFIED)

3 Because if you remember, it said 2020, so  
4 they put today's date on, August 6. And I've  
5 labeled this one as Encore 2. And I also have -- I  
6 will keep as Exhibit 1 the one I attached yesterday  
7 that had the wrong date. And will send those to the  
8 court reporter as soon as we're done.

9 What did you do to prepare for your  
10 deposition, Mr. Monheiser?

11 A. Read over some of my papers. Not a whole  
12 bunch. This is the first time I've ever done this.  
13 So I don't -- I'm not really sure what to expect of  
14 it.

15 Q. Okay. And do you remember what papers  
16 you looked over? Are you talking about the  
17 documents you produced to us?

18 A. Yeah. The e-mail that somebody sent me  
19 on the night before this with, I think, all this  
20 information that was in it, yes. I was just  
21 reviewing. I mean, essentially how the process was  
22 going to be going along.

23 Q. Did you review any documents that wasn't  
24 an Encore document, one that you produced?

25 A. Pardon?

1 Q. Did you produce -- did you review for  
2 this deposition any document that wasn't in Encore's  
3 records?

4 A. Previous to what --

5 Q. What I'm --

6 A. -- this deposition?

7 Q. I'm sorry. I didn't hear you.

8 A. Previous to this deposition?

9 Q. Right. Before this deposition, before  
10 today, did you review any document that wasn't  
11 something that was in Encore's records?

12 A. No.

13 Q. All right. So everything you looked at  
14 to prepare, and up to today, is something that was  
15 in Encore's records?

16 A. Yes. And I was looking at how you guys  
17 labeled my documents so that I could try to refer  
18 them back to the actual title name. Kind of that  
19 deal to where I could identify if they were mine or  
20 not, which I could not half of them.

21 Q. All right. And the schedules that we  
22 have looked at in this deposition, the schedules  
23 that were prepared in September, and any of the  
24 preliminary schedules that show a completion date in  
25 December 2020, did you have any conversations with

1 Michael Cox, or any of the attorneys at the Cox Filo  
2 law firm about those schedules?

3 A. Can you repeat that question?

4 Q. Yeah. The schedules that we have looked  
5 at in this deposition --

6 A. Yep.

7 Q. -- the preliminary schedules, those are  
8 the ones that had the dates showing completion in  
9 December 2020, did you have any communications with  
10 Michael Cox, or any of the attorneys at the Cox Filo  
11 law firm, about those schedules?

12 A. No.

13 Q. Did you have any substantive  
14 conversations with Michael Cox, or any of the  
15 attorneys at the Cox Filo law firm, about any aspect  
16 of this claim?

17 A. No.

18 Q. Other than your contract that we have  
19 talked about with the owner, Encore's contract with  
20 the owner, is Encore getting paid by anybody else?

21 A. I'm getting paid by Joey Odom, nobody  
22 else.

23 Q. Okay. And when you say Joey Odom, do you  
24 mean Eaux Holdings or Four-O?

25 A. Joey Odom. I think Joey Odom is Four-O.

1 Q. Okay.

2 A. Yes.

3 Q. But you, Evan -- you don't mean, you,  
4 Evan Monheiser, are getting paid by Joey Odom, you  
5 are you're referring to --

6 A. Encore.

7 Q. -- the Encore contract? That's the  
8 \$1.36 million plus the change order amounts, the  
9 stuff that we have looked at in the past two days.  
10 Encore is not expecting, and has no agreement with  
11 anybody else, to get paid anything other than that  
12 contract amount that's in the owner Encore contract;  
13 is that --

14 A. Correct.

15 Q. -- correct?

16 Are you getting paid for your testimony  
17 today?

18 A. I don't know. I'm on the clock for my  
19 company.

20 Q. Your company. Okay.

21 A. I paid for my own travel to come down  
22 here, paid for my own place to stay down here. So  
23 that all will be reimbursed by my company.

24 Q. All right. What I want to do is take --  
25 let's take a five minute break. Hold on. I may

1 have something else. All right. I don't see that I  
2 have anything left. I want to take a five minute  
3 break and we'll come back. And if I've got any  
4 little finish up questions or anything.

5 MS. WOLF: Michael, are you going to  
6 have questions?

7 MR. COX: Yes.

8 MS. WOLF: Okay. Do you know about  
9 how long, or how many?

10 MR. COX: I would anticipate less  
11 than 15 minutes.

12 MS. WOLF: Okay. So can we take a  
13 five minute break, and we'll --

14 MR. COX: Sure.

15 MS. WOLF: -- come back. If I find  
16 anything in that five minutes, I'll go and  
17 finish up, and then you can go.

18 MR. COX: Sure.

19 MS. WOLF: Okay. Thank you.

20 THE VIDEOGRAPHER: Going off the  
21 record. The time is 3:56.

22 (OFF THE RECORD)

23 THE VIDEOGRAPHER: We are now on the  
24 record. The time is 4:06.

25 MS. WOLF: I'm going to tender the

1 witness, Mike. I do not have any further  
2 questions at this time.

3 MR. COX: Thank you.

4 EXAMINATION

5 BY MR. COX:

6 Q. Encore got its Louisiana contractor's  
7 license on November 19, 2020. Was Encore prepared  
8 to enter into a written contract with Joey Odom,  
9 Four-O and/or Eaux Holdings, on that date at the  
10 time when Encore got its license?

11 A. Yes.

12 MS. WOLF: Object to form.

13 MR. COX: Would you please explain  
14 your objection?

15 MS. WOLF: No. It's just the rules  
16 don't allow for talking back and forth on  
17 it. So I'm not going to give a reason.

18 MR. COX: Well, I'm going to have  
19 to -- the deposition could take a lot, lot  
20 longer because I'll break down and ask it  
21 many different ways until I don't get an  
22 objection. If you want me to do that,  
23 I'll be happy to proceed.

24 MS. WOLF: Okay.

25 BY MR. COX:

1 Q. Did Encore get its Louisiana contractor's  
2 license on November 9, 2020?

3 A. Yes. To the best of my knowledge.

4 Q. When Encore got its Louisiana  
5 contractor's license, was Encore prepared to enter  
6 into a written contract on this project with  
7 Mr. Odom?

8 A. Yes.

9 MS. WOLF: Object to form.

10 A. Can you repeat that question, please?

11 BY MR. COX:

12 Q. I'm going to keep repeating it until I  
13 don't get an objection.

14 MS. WOLF: Then I'm going to -- if  
15 you are asking me to give the reason, I  
16 will.

17 MR. COX: I am asking you to give the  
18 reason.

19 MS. WOLF: I consider to be against  
20 the rules for me to give any type of  
21 speaking objection. But I don't want to  
22 stay here all afternoon. Here's my  
23 objection. I believe it would be  
24 impossible legally for Encore to enter  
25 into a contract -- I don't think it's

1 feasible, the day they get a license.  
2 Because by law they cannot even estimate  
3 the project until they have a license.

4 And I would be entitled to ask  
5 questions about how they could possibly  
6 estimate a project, and sign a contract,  
7 and prepare it, and negotiate a contract,  
8 all in one day. So I'm going to object to  
9 it because I don't think that you were  
10 taking into account the law and the  
11 process involved.

12 MR. COX: I now understand your  
13 objection. I do not believe it's an  
14 objection as to form. I believe it's an  
15 objection because you don't like the  
16 testimony. And you certainly are entitled  
17 to ask follow-up questions. I will, at  
18 the end of this testimony, sometime prior  
19 to 5:00, I'm going to ask to conclude the  
20 deposition today. And if necessary, we'll  
21 need to go to the judge with a motion to  
22 limit the duration of this deposition and  
23 others. But I'll continue.

24 MS. WOLF: Let me respond. It's  
25 absolutely an objection to the form



1           because built into your question is --  
2           you're not taking into account all the  
3           facts -- it would even be possible. It  
4           and has nothing to do with liking or  
5           disliking his answer because I don't care  
6           what his answer is. I just don't think  
7           your question is proper as to form.

8           MR. COX: Noted.

9           MS. WOLF: If you ask him if he was  
10          prepared to start estimating or bidding  
11          the job, I think I would not have an  
12          objection to that form. And it is also  
13          okay, Mike, you know, just for courtesy  
14          for everybody on this Friday afternoon,  
15          you don't need to break it down for Joey  
16          Odom, Four-O, or Eaux Holdings. We all  
17          know that Joey Odom personally wasn't  
18          entering into this contract. You can  
19          conflate all three of those, and I will  
20          not raise an objection to that.

21          MR. COX: Thank you.

22 BY MR. COX:

23          Q. Did I correctly understand your testimony  
24          that Encore had performed only minor work on this  
25          project before executing a written contract with

1 Joey Odom?

2 MS. WOLF: Object to form.

3 BY MR. COX:

4 Q. I'm going to ask the question again.

5 MR. COX: And I'll note your  
6 objection. And if you could, please, let  
7 me finish the question. I'm going to  
8 asked the same question, but I don't want  
9 the -- I don't want the video or the audio  
10 to be disrupted by the objection.

11 BY MR. COX:

12 Q. Do I correctly understand your testimony  
13 that Encore had performed only minor work before  
14 executing a written contract with Joey Odom on  
15 December 20, 2020?

16 MS. WOLF: Object to form.

17 BY MR. COX:

18 Q. Please answer the question again.

19 A. Correct.

20 Q. Was it your understanding that Joey Odom  
21 was not willing to execute a written contract in  
22 November of 2020 because the insurance company had  
23 underpaid him?

24 MS. WOLF: Object to form.

25 A. I don't know if I answer that. But I

1 don't know what that means. But -- as to --

2 BY MR. COX:

3 Q. Let me ask it a different way.

4 A. -- what you're -- the objection. I  
5 don't -- I was told if somebody objects, to not  
6 talk.

7 Q. Okay. Let's clear that up. She can  
8 object, and you can still answer my question, if you  
9 believe you can understand it. If you believe you  
10 understand it, and you believe you can answer it,  
11 you still can answer it.

12 A. Okay.

13 Q. Subject to her objection.

14 A. Okay. Could you repeat the question,  
15 please?

16 Q. Sure. Was it your understanding that  
17 Joey Odom wasn't willing to execute a written  
18 contract before the time that he did on December 20,  
19 because he didn't have funding because his insurance  
20 company had underpaid him?

21 A. Yes.

22 MS. WOLF: Object to form.

23 BY MR. COX:

24 Q. If Joey Odom had signed a written  
25 contract with Encore on this project on November 19,

1 2020, when Encore became licensed in Louisiana, was  
2 Encore prepared to begin full-scale work on the  
3 project?

4 MS. WOLF: Object to form.

5 BY MR. COX:

6 Q. Please answer again.

7 COURT REPORTER: I was going to say,  
8 I didn't hear the answer.

9 A. Yes.

10 BY MR. COX:

11 Q. If Encore had begun full-scale work on  
12 November 19, 2020, on this project, would Encore  
13 have been able to complete the repairs to the  
14 building within 66 days?

15 MS. WOLF: Object to form.

16 BY MR. COX:

17 Q. If Encore had begun full scale --

18 COURT REPORTER: I'm sorry. The  
19 answer and her objection were at the same  
20 time. I did not get his answer to the  
21 question.

22 MR. COX: I'll repeat the question.

23 COURT REPORTER: Thank you.

24 BY MR. COX:

25 Q. If Encore had begun full-scale work on

1 this project on November 19, 2020, when Encore got  
2 its Louisiana license, would Encore have been able  
3 to complete the repairs to the building within 66  
4 days?

5 A. Yes.

6 MS. WOLF: Object to form. Mr.  
7 Monheiser, maybe it would help if -- I'm  
8 delaying, so that I don't talk over  
9 Mr. Cox. If you could also delay just a  
10 bit, a second or two, so that --

11 THE WITNESS: Okay. Yes.

12 MS. WOLF: -- so that you and are not  
13 talking over each other. Thank you.

14 BY MR. COX:

15 Q. How sure are you that Encore would have  
16 been able to complete the work within that timeframe  
17 had Encore started on November 19, 2020?

18 A. 100 --

19 MS. WOLF: Object to form.

20 BY MR. COX:

21 Q. Please answer again.

22 A. 100 percent.

23 Q. Please explain why you're so confident.

24 A. This is, like I would -- I've tried to  
25 explain. This is what we do. We put things

1 together at the last minute. We've got a list of  
2 subcontractors that we can bring in at any point in  
3 time to do work. And the objective was to get the  
4 first floor tenant in the building. Now that does  
5 not mean finishing the exterior portion, it means  
6 getting the exterior portion dried in.

7 And that's why I kept on referencing to  
8 that when they were talking about delays. That was  
9 to finish. As long as we have an exterior that's  
10 dried in, I've got guys that can hang drywall. I've  
11 got guys that can do carpet. I was -- we were in  
12 discussions with guys that were -- were doing the  
13 carpet, which that would be that one item that could  
14 be delayed due to material delivery. And they did  
15 have that material on time. Again, now we're  
16 talking ceiling tile replacement, and we're talking  
17 about drywall, and paint. So, yes, that work could  
18 have been completed.

19 Q. Was it your understanding that Joey Odom  
20 delayed signing the contract until December 20  
21 because Scottsdale Insurance had underpaid his  
22 insurance claim?

23 A. 100 percent.

24 MS. WOLF: Object to form.

25 BY MR. COX:

1 Q. Did the one month delay in executing that  
2 contract, the written contract, between November 19,  
3 2020, and December 20, 2020, delay the completion of  
4 the building repairs on this project?

5 A. Can you please repeat the question?

6 Q. Did the fact that Joey Odom didn't  
7 sign --

8 MS. WOLF: Hold on. Ms. Villien, are  
9 you getting my objections? I'm sorry.  
10 Because the witness is still talking over  
11 me.

12 COURT REPORTER: I didn't hear an  
13 objection that time.

14 MS. WOLF: I objected to the  
15 question.

16 COURT REPORTER: Thank you.

17 MR. COX: I'll let you what we've  
18 heard. We've heard an objection to every  
19 single question. And I would stipulate,  
20 I'll let you object to the form of every  
21 single one of my questions without doing  
22 it, if you want.

23 MS. WOLF: I prefer to object to  
24 form. I prefer to listen to your  
25 questions, and object to form if I find

1                   them objectionable.

2                   MR. COX:   Okay.

3 BY MR. COX:

4           Q.       Let me repeat the question to you. Did  
5 Mr. Odom's delay in signing a written contract with  
6 Encore until December 20, 2020, delay the completion  
7 of the building repairs?

8           A.       Yes.

9                   MS. WOLF:   Object to form.

10           Ms. Villien, since the witness is still  
11 talking over me, I want to ask -- that  
12 last objection?

13                   COURT REPORTER:   Yes, ma'am. I  
14 heard -- after his answer, I heard your  
15 objection.

16                   MS. WOLF:   Okay. I think I'm going  
17 to change my mind, if I can, Mike, and  
18 take you up on -- just have a running  
19 objection to form at this point. And it's  
20 really just so that Mr. Monheiser can  
21 listen to your questions, and we don't  
22 have to delay.

23                   So if Mike is going to give me a  
24 running objection to form, I will accept  
25 that. And I will stop objecting to form



1 for each question. Is that okay, Mike?

2 MR. COX: It's okay at least through  
3 this line of questioning. But when I  
4 start the new line of questioning on a  
5 document that we are going to download,  
6 then I would like to you object  
7 specifically on that document testimony.

8 MS. WOLF: Okay. I will.

9 MR. COX: Okay. My assistant is  
10 telling me that we are unable to download  
11 the document to share it. I can e-mail it  
12 to everybody right now, or I can e-mail it  
13 at least to you, Ms. Wolf, if you would  
14 like to have a copy of it. And then I  
15 will hold it up in front of the  
16 videographer.

17 MS. WOLF: Okay.

18 MR. COX: Could you tell us your  
19 e-mail, please?

20 MS. WOLF: Yes. It's  
21 mwolf@keoghcox.com.

22 MR. COX: Okay. We're going to  
23 e-mail that right now.

24 BY MR. COX:

25 Q. You testified earlier that you believe

1 that Encore has substantially completed this project  
2 now. In fact, this week, correct?

3 A. Yes.

4 Q. What date would you say specifically?  
5 Would it be yesterday?

6 A. Yeah, whenever the -- our exterior guys  
7 picked up all their stuff.

8 Q. Which would be August 5, 2021, correct?

9 A. Yes.

10 Q. And there are still some outstanding  
11 items, like the replacement of the windows, correct?

12 A. Correct.

13 Q. But am I correct that the building is  
14 inhabitable at this point and usable --

15 A. Yes.

16 Q. -- as a leasable building?

17 A. Yes.

18 MR. COX: I'm going to show the  
19 witness a timeline, which I have already  
20 shown him during a break in the deposition  
21 today. And I'm going to hold it up. If  
22 you can move over, please, Mr. Monheiser.

23 MS. WOLF: So, Mike, is this -- let  
24 me ask you. Is this the point where I no  
25 longer have the running objection to form?

1 MR. COX: Correct.

2 MS. WOLF: Okay. So have you asked a  
3 question yet of the witness?

4 MR. COX: Not yet. I'm just showing  
5 the videographer the exhibit, which I have  
6 labeled Encore P1 for plaintiffs. And I'm  
7 going to ask if the videographer can see  
8 the document clearly.

9 THE VIDEOGRAPHER: I can. I can see  
10 it very clearly.

11 MR. COX: Is there a way that you can  
12 screen shot this, so that it -- attachable  
13 to the deposition?

14 THE VIDEOGRAPHER: It is recorded in  
15 the deposition. Screen shot it, not too  
16 sure. No, I don't think I can.

17 COURT REPORTER: I'm trying to do  
18 that right now. Let me see if I get a  
19 clear shot. It'll take me just a second.  
20 Hold on.

21 MS. WOLF: Mike, I'll tell that I got  
22 a copy of it, but I -- it's turned 90  
23 degrees, and it's not letting me rotate  
24 for some reason. So I -- I mean, I  
25 essentially can't read sideways. Can I

1 ask you some questions about this  
2 document?

3 MR. COX: Yes.

4 MS. WOLF: So who did you say  
5 prepared it?

6 MR. COX: I couldn't hear you.

7 MS. WOLF: Who prepared it?

8 MR. COX: I did. Has anyone been  
9 able to screen shot it? Can I put the  
10 document down?

11 COURT REPORTER: Yes, sir. I did a  
12 screen shot, but to be honest, if you  
13 e-mail that to me after the deposition,  
14 that would be -- if they can just use  
15 through the copy machine, e-mail me a PDF,  
16 that will be the better exhibit. Because  
17 the screen shots are not super clear. But  
18 that's your preference, sir.

19 MR. COX: Sure. What is your e-mail  
20 address?

21 COURT REPORTER: It's  
22 Lafayettereporter@Gmail.com. I'll put it  
23 in the chat also.

24 MR. COX: And your name again,  
25 please?

1 COURT REPORTER: Debbie Villien.

2 Just Debbie is fine.

3 MR. COX: Okay. Thank you.

4 COURT REPORTER: Thank you.

5 MS. WOLF: So, Mike, before you even  
6 begin your questions, I'm going to object  
7 to the document. First of all, I can't  
8 read it, as I said, because it's turned  
9 90 degrees. Second of all, because you  
10 prepared it, and the witness hasn't seen  
11 it before. But even the parts I can read,  
12 are not consistent at all with the record.

13 MR. COX: I'll note the objection.  
14 And I'm going to e-mail it again until you  
15 can read it clearly. Apparently you can  
16 read part of it, if you disagree with it.  
17 But I want you to get a full version that  
18 you can read. I'm going to try to have my  
19 assistant e-mail it to you. I'd to pause  
20 the deposition, please.

21 THE VIDEOGRAPHER: Would you like to  
22 go off the record?

23 MR. COX: Yes, please.

24 THE VIDEOGRAPHER: Going off the  
25 record. The time is 4:26.

1 (OFF THE RECORD)

2 THE VIDEOGRAPHER: We are now on the  
3 record. The time is 4:34.

4 BY MR. COX:

5 Q. Mr. Monheiser, I'm showing what I have  
6 marked as Exhibit Encore P1. Are you looking at  
7 that document?

8 (EXHIBIT NO. ENCORE P-1 IDENTIFIED)

9 A. Yes.

10 Q. I'd like to ask you some questions about  
11 it.

12 A. Okay.

13 Q. First, are you aware that Hurricane Laura  
14 hit Lake Charles, Louisiana on August 27, 2020?

15 A. Yes.

16 Q. The second entry on the top line says,  
17 POL with a date of September 15, 9/15/2020. I want  
18 to ask you some questions about that. POL is my  
19 abbreviation for proof of loss. Are you aware that  
20 Jeff Major, through Skyline Adjusters provided  
21 several binders to a representative for Scottsdale  
22 Insurance Company detailing his estimate of the  
23 damages to the building on September 15, 2020?

24 A. I don't know the specific date. But I'm  
25 aware of the binders.

1 Q. I would like for you to assume that that  
2 is the date that he did it for the purpose of this  
3 question. Are you willing to do that?

4 A. Yes.

5 Q. Okay. I want you to also assume that  
6 Louisiana law requires an insurance company, in  
7 cases like this, to pay the full amount of someone's  
8 damages within 30 days of written proof of loss to  
9 the insurance company. Do you accept that?

10 MS. WOLF: Object to form.

11 MR. WOLFF: Is Mary Anne back?

12 MS. WOLF: Yeah, I'm here.

13 MR. WOLFF: Okay. Sorry.

14 MS. WOLF: Ms. Villien, can you hear  
15 me when I object? I'm sorry.

16 COURT REPORTER: Yes, ma'am.

17 BY MR. COX:

18 Q. I want you to also assume, Mr. Monheiser,  
19 that Louisiana law requires an insurance company in  
20 cases like this to pay the full amount of damages  
21 within 60 days, or it's subject to other types of  
22 penalties than the 30 day deadline. Do you accept  
23 that?

24 MS. WOLF: Object to form.

25 A. Yes.

1 BY MR. COX:

2 Q. So if proof of loss was on September 15,  
3 2020, 30 days would be October 15, 2020. Would you  
4 agree with that calculation of time?

5 MS. WOLF: Object to form.

6 BY MR. COX:

7 Q. Would you also agree that the 60 --

8 COURT REPORTER: I'm sorry, Mr. Cox.  
9 I didn't hear the witness' answer.

10 A. Yes.

11 COURT REPORTER: Thank you.

12 BY MR. COX:

13 Q. Would you also agree that the 60 day  
14 period from September 15 would end on November 14,  
15 2020?

16 MS. WOLF: Object to form.

17 A. Yes.

18 BY MR. COX:

19 Q. Now you have testified that Encore  
20 received its Louisiana contractor's license on  
21 November 19, 2020, correct?

22 A. Yes.

23 Q. And you testified that if Encore had  
24 begun construction full speed on November 19, 2020,  
25 you're confident that Encore would have completed



1 the repairs to this building within 66 days,  
2 correct?

3 MS. WOLF: Object to form.

4 A. Yes. To a certain extent of the first  
5 floor, to get the first floor moved in. That was on  
6 the -- on the contract.

7 BY MR. COX:

8 Q. Let me rephrase the question, because  
9 that was --

10 If Encore had begun construction full  
11 speed on that day, November 19, that appears on the  
12 top line, are you confident that Encore would have  
13 completed the repairs to the building by January 24,  
14 2021?

15 MS. WOLF: Object to form.

16 A. We would have finished the first floor  
17 tenant by 2021 -- by around that date, around  
18 1/24/21. And then later finished that second floor.  
19 Again, the main focus of this whole item -- of this  
20 whole job was that first floor and getting the  
21 building dried in and then doing work on the  
22 interior. So, yes, we could have gotten that -- the  
23 first floor tenant in by 1/24/21.

24 BY MR. COX:

25 Q. Well let me ask you this. Was the 66 day

1 completion in the contract that you entered into  
2 with Mr. Odom for completion of all the repairs to  
3 the building?

4 A. It was completion of the first floor.

5 Q. What was the completion date for the  
6 other repairs?

7 A. Exterior and the second floor.

8 Q. Yeah, but was there a completion time  
9 period for that?

10 A. I believe there was a specific date  
11 listed.

12 COURT REPORTER: I'm sorry. Ms. Mary  
13 Anne, did you say something?

14 MS. WOLF: I objected to form of the  
15 question.

16 COURT REPORTER: Thank you.

17 BY MR. COX:

18 Q. Let's pull the contract and let me have  
19 you look at it.

20 MR. COX: Ms. Wolf, do you know which  
21 tab it is? Is it 5?

22 MS. WOLF: It's E2. And what you  
23 want is page 3 of 8, section 7, time of  
24 performance.

25 MR. COX: Would you repeat that,

1 please?

2 MS. WOLF: Yes. Page 3 of 8,  
3 Section 7, time of performance.

4 BY MR. COX:

5 Q. I will let you review that provision.

6 A. Yeah, 66 days of commencement the second  
7 floor and all exterior work, shall be completed by  
8 February 28.

9 Q. Okay. So that would have been  
10 February 28 would have been how many days?

11 A. For the second floor and the outside, I  
12 think 90 -- around 90 days, or a month after.

13 Q. Okay. Around a month after the first  
14 contract?

15 A. Correct.

16 Q. Okay. And so we would have to add to  
17 that last entry on the top line, Encore completes  
18 repairs to the first floor for it to be accurate to  
19 you, correct?

20 A. Yes.

21 MS. WOLF: Object to form.

22 BY MR. COX:

23 Q. And then it would be 30 days later,  
24 approximately, so approximately 2/24/21 where  
25 Encore -- well let me ask you a question about it.

1           When would Encore -- if Encore had  
2 started full-scale construction on November 19,  
3 2020, when would Encore have completed the entire  
4 repairs to the building, first and second floor?

5           MS. WOLF: Object to form.

6           A.     The second floor everything would have  
7 been done. Trade stacking, we would have gotten  
8 drywall in first floor, dry wall in second floor.  
9 Everything starting on the first floor then going to  
10 the second floor. So everything would have been  
11 done on the interior shortly after it was done on  
12 the first floor. But again, the first floor was  
13 that priority.

14           So how many days it's taking to maybe  
15 finalize a punch list, or something like that on  
16 that second floor, you could just -- I would  
17 probably say a week to two weeks after that first  
18 floor would be completed is when I could say that we  
19 would have a confident day that we could have  
20 finished that second floor.

21 BY MR. COX:

22           Q.     You would believe that you would have  
23 completed, if I understand you correctly, the  
24 repairs to the entire building two weeks after the  
25 January 24th?

1 A. On the interior.

2 MS. WOLF: Object form.

3 BY MR. COX:

4 Q. And I'm talking about making the entire  
5 building inhabitable?

6 A. Yes.

7 MS. WOLF: Form.

8 A. For tenants, yes.

9 BY MR. COX:

10 Q. How long would that have taken after  
11 January 24, 2020?

12 A. Again, I think that's a little bit of  
13 a -- the interior work would have been completed.  
14 The exterior work would have continued focusing on  
15 entrance areas, so that if there was a second floor  
16 tenant that -- and the entrance was not blocked by  
17 work continuing in on the building. So focusing on  
18 the entrances and exits of the building, around that  
19 date is when it could happen, inhabitable.

20 Q. What date are you talking about? Are you  
21 talking about February 24, 2021?

22 A. Yes.

23 MS. WOLF: Object to form.

24 BY MR. COX:

25 Q. I'm going to put in there, Encore

1 completes repairs to entire building. Would you  
2 agree with that, that Encore could have done that by  
3 February 24, 2021, had it started construction  
4 full-scale on November 19, 2020?

5 A. Yes.

6 MS. WOLF: Object to form.

7 BY MR. COX:

8 Q. Okay. So the top line on this drawing is  
9 a line that, in my mind, assumes that Scottsdale had  
10 fully paid Mr. Odom's damages within that 30 and 60  
11 day deadline. And that top line, as far as we laid  
12 it out, you believe to be accurate?

13 MS. WOLF: Object to form.

14 A. Yes.

15 BY MR. COX:

16 Q. The red line is a second timeline. And I  
17 want you to go through that one with me. The red  
18 line assumes that Scottsdale Insurance Company  
19 underpaid Mr. Odom's claim within the 30 day  
20 deadline and the 60 day deadline. I want you to  
21 assume that's true. Are you willing to do that?

22 MS. WOLF: Object to form.

23 A. Yes.

24 BY MR. COX:

25 Q. Was it your understanding that

1 Scottsdale -- was it your understanding from your  
2 discussions with Mr. Odom and Jeff Major, that  
3 Scottsdale, in fact, had underpaid Mr. Odom's claim  
4 within that 30 day and 60 day deadline under  
5 Louisiana law?

6 MS. WOLF: Object to form. Also,  
7 Mike, I need to raise an objection because  
8 I can no longer see what it is you're  
9 showing the witness. It's been modified.  
10 And because I had to print it out, I don't  
11 see in color.

12 COURT REPORTER: And I did not hear  
13 the witness' answer to that last question.

14 MR. COX: What's that?

15 COURT REPORTER: I did not hear the  
16 witness' last answer to the question.

17 A. Yes.

18 COURT REPORTER: Thank you.

19 MR. COX: And just to clarify, the  
20 only thing that I have changed is on the  
21 top line. And I'll show the camera what  
22 I've changed. It's the last entry, which  
23 is February 24, 2021 -- well actually I  
24 added to January 24, 2021. It said Encore  
25 completes repairs. I added the words, to

1 first floor, for January 24, 2021.

2 I then added February 24, 2021, and I  
3 added the words, Encore completes repairs  
4 to entire building. That's the only thing  
5 I've changed on the drawing. And for the  
6 sake of what's colored, the top line is  
7 not colored. The line as it comes down  
8 below the October 15th date, and then  
9 extends all the way to the end of the  
10 page, so in other words the bottom line,  
11 is in red. It should, at least, appear  
12 thicker on the copy that I sent to you.  
13 And I'll hold it up again to the camera  
14 and you can see what is red on it.

15 BY MR. COX:

16 Q. Now, Mr. Monheiser, I'll continue asking  
17 you about this bottom line. You've testified that  
18 Mr. Odom delayed entering into the contract --  
19 entering into the written contract with Encore until  
20 December 20, 2020, because he didn't have adequate  
21 funding from his insurance company. That was your  
22 understanding, correct?

23 A. Yes.

24 MS. WOLF: Object to form.

25 BY MR. COX:



1 Q. What was your understanding about why --  
2 I'm asking this a different way. What was your  
3 understanding about why Mr. Odom delayed entering  
4 into the written contract until December 20?

5 MS. WOLF: Object to form.

6 A. He did not have funding from his  
7 insurance company.

8 BY MR. COX:

9 Q. The fact that construction began on  
10 December 20 instead of November 19, did that cause  
11 the construction timeline to be delayed?

12 MS. WOLF: Object to form.

13 A. Yes.

14 BY MR. COX:

15 Q. And caused it to be delayed through  
16 August 5, 2021, for the first floor, correct?

17 MS. WOLF: Object to form.

18 A. It was -- that's in May. This is the  
19 second floor whenever -- or the outside, I would say  
20 it would be fully completed on this date.

21 BY MR. COX:

22 Q. Okay. So 8/5/21 would be six-month  
23 delayed completion for entire building, correct?

24 A. Yes.

25 MS. WOLF: Object to form. That's

1 not what he said.

2 BY MR. COX:

3 Q. And when -- if you would note on there,  
4 what date would it have delayed the construction  
5 until for the first floor to be occupiable, or  
6 leasable, by Homeland Security?

7 MS. WOLF: Object to form.

8 A. Can you repeat the question?

9 BY MR. COX:

10 Q. When was the first floor repaired to the  
11 degree that the tenant, Department of Homeland  
12 Security, could move back in?

13 MS. WOLF: Object to form.

14 A. Sometime in May or June I believe. I  
15 don't know the exact date. It's in my notes.

16 BY MR. COX:

17 Q. Do you remember when they, in fact, moved  
18 into the building?

19 MS. WOLF: Object to form.

20 A. I know furniture was delivered last week  
21 or this week. But they have been -- they've been in  
22 the building for maybe 2 months.

23 BY MR. COX:

24 Q. Okay. So that would be -- going back  
25 from August would be -- they would have moved

1 into -- the building would have been inhabitable for  
2 that tenant sometime in June --

3 A. Correct.

4 Q. -- of 2021?

5 A. Correct.

6 Q. I'm going to add date June 2021. And  
7 that would be the first floor completed, correct?

8 A. Correct.

9 MS. WOLF: I'm going to object to  
10 form. And I'm just going to make a  
11 running objection, because I can't see  
12 anything that's being done in the room. I  
13 know --

14 MR. COX: I'll hold up again so you  
15 can read it. And I'll e-mail this to  
16 everyone immediately when I'm done with  
17 his testimony. And we can take a break so  
18 you can cross-examine him on it.

19 BY MR. COX:

20 Q. So, Mr. Monheiser, would you agree,  
21 subject to the assumptions that we have made, that  
22 this -- that these two timelines would be accurate  
23 according to your testimony?

24 MS. WOLF: Object to form.

25 A. Yes.

1 MR. COX: I'll offer and introduce  
2 Exhibit Encore P1 attached to the  
3 deposition at this time.

4 MS. WOLF: And for all the reasons  
5 that have stated, I object to Plaintiff's  
6 Encore P1.

7 MR. COX: Noted. I suggest we take a  
8 break now, so that I can e-mail this again  
9 as amended, and then we can have follow-up  
10 questions.

11 MS. WOLF: Okay.

12 THE VIDEOGRAPHER: Going off the  
13 record. The time is 4:54.

14 (OFF THE RECORD)

15 THE VIDEOGRAPHER: We are now on the  
16 record. The time is 5:08.

17 BY MR. COX:

18 Q. Because full-scale work did not begin  
19 until December 20, 2020, did that affect the  
20 availability of subcontractors on this job?

21 MS. WOLF: Object to form.

22 A. Can you repeat that question?

23 BY MR. COX:

24 Q. Because full-scale work didn't start  
25 until December 20, 2001 -- first of all, wasn't that

1 your testimony, that full-scale work didn't start  
2 until you had a written contract with Mr. Odom?

3 A. Correct.

4 MS. WOLF: Form.

5 BY MR. COX:

6 Q. If that's the case, and full-scale work  
7 didn't begin until then, did that delay in the  
8 commencement of full-scale work affect the  
9 availability of subcontractors on this job?

10 MS. WOLF: Object to form.

11 A. Yes.

12 BY MR. COX:

13 Q. Did that delay affect the pricing of  
14 materials on this job?

15 MS. WOLF: Object to form.

16 A. Yes. As far as plywood more  
17 specifically, yes.

18 BY MR. COX:

19 Q. Were there any other elements of material  
20 where the price of the materials increased after the  
21 hurricanes, and specifically after December 2020?

22 A. Yes.

23 MS. WOLF: Object to form.

24 A. I'm aware of some. But I couldn't name  
25 any specific.

1 BY MR. COX:

2 Q. There was an ice storm in Lake Charles in  
3 February 2021, correct?

4 A. Correct.

5 Q. Did that ice storm make the issues of the  
6 availability of subcontractors worse?

7 A. Yes.

8 MS. WOLF: Object to form.

9 BY MR. COX:

10 Q. Did the ice storm make the issue of the  
11 increased price of materials more of an issue?

12 A. Yes.

13 MS. WOLF: Object to form.

14 BY MR. COX:

15 Q. There was a flood in Lake Charles in May,  
16 correct?

17 A. Correct.

18 Q. Did that flood make the issue concerning  
19 the availability of subcontractors worse?

20 MS. WOLF: Object to form.

21 A. Yes.

22 BY MR. COX:

23 Q. Did the flood in May make the issue  
24 regarding the increased price of materials worse?

25 MS. WOLF: Object to form.

1 A. Yes.

2 MR. COX: Thank you. I don't have  
3 any other questions.

4 CONTINUATION OF EXAMINATION

5 BY MS. WOLF:

6 Q. Mr. Monheiser, we have spent the past two  
7 days going through Encore's documents and  
8 construction records that you have produced for us;  
9 isn't that correct?

10 A. Correct.

11 Q. And the testimony that you've given about  
12 those documents, which includes the contracts, the  
13 subcontracts, all of the supporting documents with  
14 your subcontracts, your daily logs, your records of  
15 conference calls with GSA, when we went through all  
16 of that information your testimony was truthful?

17 A. Yes.

18 Q. And we discussed in that two days of  
19 testimony delays and causes of delays, correct?

20 A. Correct.

21 Q. All right. And, in fact, we drilled down  
22 through the daily logs and your other documents that  
23 you have provided us, and I asked you specific  
24 questions about your entries on a day-to-day basis;  
25 isn't that correct?

1 A. Correct.

2 Q. And the information that you knew on a  
3 particular day when you wrote down something on a  
4 particular day, your memory of it was clearer on  
5 that day than it is today when you're giving this  
6 testimony; isn't that right?

7 A. Can you repeat that question?

8 Q. When you're making entries in your daily  
9 log, or when you are doing meeting minutes on the  
10 same day, or the next day after a meeting, your  
11 memory of the details of that day are clearer on the  
12 day that you are documenting it than they are today;  
13 isn't that correct?

14 A. Are you asking if I am -- if I remember  
15 all the details of my notes as I -- today as I did  
16 back then?

17 Q. That's close to what I was asking. Let  
18 me ask my question. I think it's a little bit  
19 different. That when you're writing something in a  
20 daily log, your memory of that particular day, and  
21 the specific details, is clearer on that day when  
22 you are writing it than it is months later; isn't it  
23 correct?

24 A. Yes.

25 Q. Today plaintiff's counsel has shown you a



1 handwritten document that's -- it's labeled Exhibit  
2 Encore P1, correct?

3 A. Correct.

4 Q. And this document was created solely by  
5 Mr. Cox, by plaintiff's counsel, correct?

6 A. Correct.

7 Q. And you haven't seen it before today; is  
8 that right?

9 A. Correct.

10 Q. Did you discuss this document off the  
11 record today with Mr. Cox?

12 A. Yes.

13 Q. All right. And what did y'all discuss?

14 A. He just showed me the document. We went  
15 through the dates and asked if they were accurate.

16 Q. He asked you off the record before he  
17 showed it whether or not the dates were accurate?

18 A. Can you repeat that question?

19 Q. What I want to know is, before Mr. Cox  
20 showed it to us the first time, he had asked you to  
21 confirm that the dates were accurate?

22 A. Yes.

23 Q. Did you confirm that they were accurate?

24 A. Yes.

25 Q. Before he showed it to us?

1 A. Yes.

2 Q. But actually during your testimony just  
3 now, you had to make corrections to it, right?

4 A. Correct.

5 Q. All right. And during your questioning  
6 by plaintiff's counsel, at no time did he show you  
7 or pull any of the documents that Encore has  
8 produced, your voluminous construction records?  
9 Other than your contract with the owner, you've not  
10 referenced any of those documents in responding to  
11 his questions; is that correct?

12 A. What you're missing is the ability to  
13 pull people from anywhere that --

14 Q. Mr. Monheiser --

15 A. -- I do apologize. This is -- this is my  
16 deposition on -- I am here to give my information of  
17 what I can do to you guys. To this counsel and to  
18 that counsel. So you're asking me a simple question  
19 that is not very simple. You are forgetting  
20 elements, that we have manpower. Do I need demo  
21 plans or do I plans to demo the outside of a  
22 building? No, I don't. It's fairly specific.

23 I've got guys who can do that in Kansas  
24 City who would drive down and could be here tomorrow  
25 at, you know, 4:00 in the afternoon. I had that

1 ability to do that. It's not a fact or fiction  
2 deal, or a question whether there is a reason why  
3 the commencement date was on the 24th, and he did  
4 not sign that contract until the 20th of December.  
5 There is a reason.

6 Q. Mr. Monheiser --

7 A. And it's very obvious there's a reason.  
8 Again, and I'm not -- you know, everybody here is  
9 taking secondhand information -- looking from a mile  
10 away whenever all this was happening, you know --

11 Q. Mr. Monheiser, I don't really -- listen,  
12 I don't like to -- I don't like to cut witnesses  
13 off. But the fact is that your answer is nowhere  
14 close to what my question was.

15 So number 1, I appreciate your answer, I  
16 really do. I think that everything that I just  
17 heard you say, I have heard you say over the last  
18 two days. So don't think that I'm cutting you off  
19 because I'm not interested in what you have to say.  
20 That is not correct. I did hear what you had to  
21 say.

22 Here was my question, which is a  
23 different question. And so while it is your  
24 deposition, it's also my client's deposition, too,  
25 and it's a question and answer.

1           So what my question was. Is that while  
2 plaintiff's counsel was asking you questions about  
3 Encore P1, the only document you referred to was  
4 Encore's contract, you did not look at any other  
5 documents in responding to those questions; isn't  
6 that true?

7           A. Can you repeat that question?

8           Q. Yes. When plaintiff's counsel was asking  
9 you questions about Encore P1, this document that he  
10 prepared, he did not show you, and you did not refer  
11 to, any documents in Encore's record, other than  
12 Encore's contract with the owner; isn't that  
13 correct?

14          A. Correct.

15                 MS. WOLF: I do not have any other  
16 questions.

17                 MR. COX: Thank you, guys. Y'all  
18 have a good weekend.

19                 THE VIDEOGRAPHER: Going off the  
20 record. The time is 5:18.

21                 COURT REPORTER: Mr. Cox, you did --

22                 MR. COX: Yes. On the record I was  
23 going to tell you that I wanted a copy of  
24 the deposition transcript.

25                 Friday, August 06, 2021 5:18 PM

1 REPORTER'S PAGE

2 I, Deborah Villien, Certified Court  
3 Reporter, in and for the State of Louisiana, the  
4 officer, as defined in Rule 28 of the Federal Rules  
5 of Civil Procedure and/or Article 1434(b) of the  
6 Louisiana Code of Civil Procedure, before whom this  
7 sworn testimony was taken, do hereby state:

8 That due to the interaction in the  
9 spontaneous discourse of this proceeding, dashes  
10 (--) have been used to indicate pauses, changes in  
11 thought, and/or talk overs; that same is the proper  
12 method for a Court Reporter's transcription of  
13 proceedings, and that the dashes (--) do not  
14 indicate that words or phrases have been left out of  
15 this transcript;

16 That any words and/or names which could  
17 not be verified through reference material have been  
18 denoted with phonetic [ph]; that any non-word sounds  
19 or utterances have been denoted with [descriptive  
20 sound];

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25 Deborah Villien, CCR

CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original required seal.

I, Deborah Villien, Certified Court Reporter (License No. 98079) in and for the State of Louisiana, as the officer before whom this testimony was taken remotely via videoconferencing, do hereby certify that EVAN MONHEISER, after having been duly sworn by me on August 5, 2021 at the commencement of his deposition, upon authority of R.S. 37:2554, did testify on the 6th day of August 2021 as hereinbefore set forth in the foregoing 233 pages; this testimony was reported by me in the stenomask, voice writer, method, was prepared and transcribed by me or under my personal direction and supervision, is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services; that I have acted in compliance with the prohibition on contractual relationships,

1 as defined by LA Code of Civil Procedure Article  
2 1434 and in rules of the board; that I have no  
3 actual knowledge of any prohibited employment or  
4 contractual relationship, direct or indirect,  
5 between a court reporting firm and any party  
6 litigant in this matter, nor is there any such  
7 relationship between myself and a party litigant in  
8 this matter. I am not related to counsel or to the  
9 parties herein, nor am I otherwise interested in the  
10 outcome of this matter.

11 I further certify that before the completion of the  
12 deposition, as defined in Rule 30(e)(2) of the  
13 Federal Rules of Civil Procedure and/or Article 1445  
14 of the Louisiana Code of Civil Procedure the  
15 deponent and/or a party did not request to review  
16 the transcript.

17 August 11, 2021  
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